

ILF-Nepal

The International Legal Foundation – Nepal

CASE NOTES – JUNE 2009

Editor's Notes: This edition of the Case Notes shows the remarkable improvements in the quality of judicial opinions issued in KTM but also, demonstrate the need for a functioning public defender system so that individuals, like Mr. Raj Kumar Rai, are not forgotten in prison for ten months

Government of Nepal v. Bhim Bahadur Thapa (ILF-Nepal 82) (Adv. Surya Bhadur Pandey)

Courts in Nepal have been reluctant to acquit defendants in cases where there was no evidence to support a conviction. Instead, they often find a person “guilty” and impose a symbolic fine. In this case, however, the KTM District Court acquitted our client in view of the lack of evidence.

Our client, a Rickshaw driver in the tourist sector of KTM, was charged with “dacoit” (a robbery involving more than 4co-accused). If found guilty, he faced up to six year in prison. The prosecutor alleged that several co-accused entered the hotel room where the complainant and his family were sleeping and robbed them at knifepoint. On December 18, 2008, our client was arrested in the vicinity of the crime without any stolen property. The other co-accused were never arrested. Our client was released on bail January 15, 2009. He told the police and later the court, that he had nothing to do with this robbery and the complainants never testified. ILF-Nepal argued that there was no evidence to support a conviction and in the absence of other co accused, there was no evidence allowing the court to find that “dacoit” had been committed. The KTM District Court acquitted our client, finding insufficient evidence to convict.

Government of Nepal v Raj Kumar Rai (ILF Case*) (Adv.Bimala Yadav)**

This case illustrates the need for an effective public defender in Nepal. Our client had been detained for over 10 months illegally.

During a client visit at the central jail, a prisoner approached the ILF advocate requesting information regarding his case. He had been in custody for several months but had no lawyer. He had been told that ILF-Nepal provides representation in Public Offense cases before the CDO. ILF-Nepal advocate made a number of inquiries at the KTM CDO before she was able to gain access to the file. When she finally saw the file, she found that the man had been sentenced in absentia to a simple fine of 1250 npr, in August 2008. In other words, he had been detained illegally for 10 months. The ILF advocate asked the KTM CDO to issue a letter to the central jail

for the person's immediate release. The judicial system had completely forgotten about this man. Had a lawyer been assigned by the court at the first remand, this would never have happened.

Government of Nepal v. Ram Bahadur Balami (ILF-Nepal No. 237) (Adv. Pawan Kumar Jaisawal)

The appellate court is finally recognizing that the CDO does not actually hear or review bail applications. This decision may convince the CDO to change his practices.

Our client was charged under the Public Offense Act, section 2, for coming home drunk and assaulting members of his family. The CDO set 8000 npr bail. ILF-Nepal filed a No. 17 petition in the appellate court arguing that our client should be released because in this case, as in many others before the CDO, there is no basis for the bail order. The order was set forth on a boilerplate template form. The Appellate Court agreed with the ILF advocate and ordered our client released. In its decision, the Court stated: "There is no reasonable ground to find the defendant Ram Bahadur Balami guilty of charges from the immediate evidence in the file, including the FIR (complainants statement). It is clear that the CDO only put the bail amount on the template of a decision prepared by someone else and the CDO hasn't deliberated over the reasons and grounds for setting bail."

The next two cases illustrate the need for a defense investigation Had ILF-Nepal advocates not located the families of these clients, they would probably have been detained pursuant to a high bail and possibly never reconnected with their families.

Government of Nepal v. Manju Majhi (ILF-Nepal No.258) (Adv. Shyam Kumar Bishwakarma)

According to an age assessment expert, our client, Manju, was 12 years. She had been living and working in the house of the complainant who now accused her of stealing jewelry. The child was unable to provide ILF-Nepal with contact information for her family other than to say that her aunt and uncle worked in a glue factory in Naikap, an area of KTM. ILF-Nepal advocate contacted the complainant who insisted that Manju had no relatives and that the complainant was all she had. After a diligent investigation, ILF-Nepal advocate located the aunt and uncle in the industrial adhesive factory. They said that Manju had been working in the complainant's home for 3 years, and during that time, her family had not been allowed to visit her. Indeed, a few days before, Manju's mother had attempted to get her back and had been told by the complainant that Manju was not there and would not return for a month. It seems that Manju had been held captive in the complainant's house. The aunt was present at the jail/bail hearing. The court imposed a small bail of 4000 npr – the alleged stolen property was valued at 229,500 npr, the family paid the bail and the child was released.

Government of Nepal v. Madan Pariyar (ILF-Nepal No. 115) (Adv. Achutam Kumar Acharya)

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In the case, ILF-Nepal managed to reconnect a father with his son after 7 years. Our client, a 13-year-old child, was charged along with a friend with burglarizing a house and stealing silver, gold, jewelry and approximately 22 lakhs. ILF-Nepal successfully argued to have the child removed from adult detention to a juvenile facility. Bail was set at 10,000 npr. Our client had run away from home in a remote village of Nepal six to seven years earlier. After diligent investigation, the ILF-Nepal advocate managed to ascertain the client's father's phone number. Fortunately, he lived in KTM. As soon as he was contacted, he came to the office of ILF-Nepal. He was overwhelmed with joy. He told us how he had tried in vain to find his lost son. He was convinced that his son was dead. He told us that he was illiterate and worked very hard. Though he survived day-to-day, he would be able to save the bail money in approximately one week. The father has paid his son's bail and father and son are now living together.

The following four cases are significant in that the appellate court granted the habeas corpus petitions filed by ILF-Nepal. Habeas Corpus relief is generally sought in Supreme Court but the process can be time consuming. The petitions filed in these cases, led to the release of two juveniles and two adults.

Government of Nepal v. Kaput Gurung (ILF Case259) (Adv. Shyam Kumar Bishwokarma)
Government of Nepal v. Manoj Baraili (ILF Case266) (Adv.Mohan Sashankar)

In the first case, our client, 16 years old and homeless, was arrested at a guest house along with several adults involved in the sex trade. Our client was arrested for merely being present at the guest house and charged with misbehaving in a public place under sections of the Public Offense Act. He was held in adult custody on administrative charges. The court ordered the release of the client because he was improperly held in adult custody and the charges had not been filed timely as requested by section 4 of the Act.

In the second case, our client was 13 years old and charged with theft. The prosecution's theory was the following. In January 2009, the complainant told the police that he had been the victim of a theft without identifying the perpetrator. In May 2009, he identified our client as the perpetrator. He had seen our client with a fresh haircut and was convinced that this haircut could only have been performed with his stolen haircutter. The police conducted no investigation, believed the strange story, and arrested our client. He was held in custody for 11 days without charges being filed.

Government of Nepal v. Bidur Thapa (ILF Case254) (Adv.Ajay Shankar Jha)
Government of Nepal v. Man Bahadur Pariyar (ILF Case221) (Shyam Kumar Bishwokarma)

These two cases involve a public offence. In the first case, the accused was charged with an administrative offence. Charges were not filed, as required by Public Offence Section 4, within

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7 days. This client was held in custody for 14 days before he was released as a result of the Habeas Corpus.

In the second case, the accused was charged with a public offence and held in custody pursuant to an order issued by the assistant CDO. In earlier cases brought by ILF-Nepal in Supreme Court, the Court held that the assistant CDO has no authority to order a person detained on bail. The order seems to have had little impact on the practices of the CDO. This client was held in custody for 37 days, pursuant to an order of the assistant CDO. He was released as a result of the Habeas Corpus.

Natalie Rea, ILF-Nepal Director
July 15, 2009

ILF-Nepal is happy to announce the opening of its first district office, ILF-Nepal/Janakpur. The office has 2 lawyers, Achutam Kumar Acharya, office head, and Ajay Shankar Jha, staff advocate, who have been training in the KTM office for over six months. Our Janakpur office is located at Murali Chowk and can be reached at 977-41-527850

ILF-Nepal also wants to thank Roxanne Vachon for her contribution to the office and welcome Priya Lakhi, a public defender from Atlanta to the office.

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