

Malaysia Offers Compensation For Wrongful Conviction

By JD Staff

When immigration authorities raided his workplace in Malaysia on March 5, 2005, Nepalese Mangal Bahadur Gurung was arrested when he was only able to produce a photocopy of his passport as proof he was in the country legally.

After 18 days in custody, Gurung pled guilty in the Petaling Jaya magistrate's court to entering Malaysia illegally. The 31-year-old father of two was sentenced to ten months imprisonment and a canning.

After the canning had been carried out, a lawyer who had been retained to work on Gurung behalf presented proof to the court that he had a valid passport and work permit. The lawyer explained that Gurung had not been provided with an interpreter, so at the time he acknowledged committing the offense he didn't know what he was admitting to having done. On May 12, 2005, Judge Zaharah agreed a miscarriage of justice had taken place. He set aside Gurung's conviction and ordered his immediate release. Shortly after his release, Gurung left to return to his home and family in Nepal, where he earns money as a trekking guide.

Responding to public criticism of its actions, the Immigration Department denied it had erred. Officials blamed Gurung for his wrongful conviction, asserting it was caused when he lied in admitting his guilt. That claim was a stretch because he hadn't been provided with an interpreter. Immigration officials also blamed Gurung for failing to produce his documents at the time his workplace was raided. That argument was also disingenuous, because at the time of Gurung's arrest his work permit and passport were being held by his employer. His employer took possession of the documents after Gurung filed a complaint with the government's Labor Department in 2004 for non-payment of his wages.

Before Gurung had returned to Nepal he filed an application for compensation. In February 2006 the Malaysian government announced that it had decided to award Gurung compensation of \$2,246.¹ Although the amount was small, it was unprecedented. Gurung's case was the first time Malaysia has agreed to compensate a wrongly convicted person.

A human rights advocate in Malaysia, Irene Fernandez, decried the offer as "a paltry sum." She described it as insufficient considering what Gurung endured. He was not only imprisoned in a foreign country, but she noted "He was also caned, which can be so emotionally traumatic that it can take years to recover. To make matters worse, he was innocent."² Fernandez also said of any award, "It should be big enough as we also heard that he is trying to get medical treat-

ment there [in Nepal]. Since medical treatment is not cheap, the compensation should be sufficient to cover all that is necessary."³

When Gurung was notified in Nepal of Malaysia's offer, his initial reaction was to reject it as insufficient. Gurung spoke through a friend identified as George, who said, "He had sought compensation before leaving Malaysia but did not expect 'so little'. The scar is still fresh and every time he recalled how he tried to fight for his innocence while in custody. It pained him to realize that nobody cared. The money he earns as a guide is not much, but at least he is home and among people he can trust."⁴

Although Gurung was undecided about accepting the compensation offer, his friend George emphasized, "this is not just about money but his dignity."⁵

It is unknown if the Malaysian government will revise its offer if it is rejected by Gurung. Since it is the first time Malaysia has offered a wrongly convicted person compensation, government officials may think they are doing Gurung a favor by offering any amount.

Endnotes and sources:

1 RM 8,340 for Mangal, *The Malay Mail*, February 26, 2006. At the exchange rate on February 27, 2006, Malaysian RM 8,340 is the equivalent of \$2,246.

2 It's too little, says Tenaganita, *The Malay Mail*, February 27, 2006.

3 *Id.*

4 'Paltry' Compensation For Mangal, *The Malay Mail*, February 27, 2006.

5 *Id.*



Man Innocent Of Rape Sues His Accuser For Defamation

By JD Staff

Chris Matthew was arrested on September 3, 2005, for allegedly committing a rape in Charlottesville, Virginia. A former University of Virginia law student had identified Matthew as the man who had sexually assaulted her.

Five days later a DNA test excluded Matthews as the source of semen recovered from the woman. The rape charge was dropped against Matthew and he was released from custody.

Another man, John Henry Agee, was later arrested for allegedly raping the woman.

In December 2005, Matthew filed an \$850,000 defamation suit against the woman

who had falsely accused him, which caused his arrest and public identification as a rapist.

Charlottesville DA Dave Chapman responded to the lawsuit by acknowledging Matthew's arrest was a "tragic mistake." However, he denounced the lawsuit, claiming "it will have a chilling effect on the willingness of women to report sexual assaults."¹

Several Virginia lawmakers responded to Matthew's suit by sponsoring a bill in Virginia's General Assembly that would immunize from civil liability a witness in a criminal case who testifies or makes a criminal identification "with the good faith belief in its veracity."²

Matthew's lawyer, Deborah Wyatt, responded to the proposed immunization bill by saying that Matthew had a legitimate cause of action because there was reason to believe the woman was "negligent in accusing Matthew." Wyatt also said she thought that the civil immunization bill was racially motivated. She was quoted in the *Cavalier*

Daily, "If instead of being a pretty, blonde, University of Virginia type girl who had accused a black male barber and traumatized him, this had been a poor black woman who'd falsely accused a white captain of the football team and traumatized him, would [the Delegates] have been sponsoring the same bill?"³

Although Virginia doesn't have a wrongful conviction statute, if it did it wouldn't have applied to Matthew because he was released prior to being convicted. There is no apparent wrongdoing by the police, who acted on the basis of the woman's false identification. So she is Matthew's sole source of redress for being falsely identified publicly as a rapist.

Endnotes and sources:

1 4Better or Worse - The week in review, *The Hook*, December 22, 2005.

2 Bill Aims To Limit Liability of Witnesses, Christina Tkacik, *Cavalier Daily*, University of Virginia, February 2, 2006.

3 *Id.*

