

Col Kumar Lama press coverage

LAW SOCIETY GAZETTE

Nepal torture acquittal raises universal jurisdiction fears

9 September 2016

By Monidipa Fouzder

The Crown Prosecution Service and police should not be deterred from bringing torture cases to the UK under the rarely used legal principle of universal jurisdiction, solicitors have said, following the acquittal of a Nepalese military officer at the Old Bailey this week.

The case involving Colonel Kumar Lama, a Nepalese national and officer of the Nepal army, was brought to the UK under the legal principle of 'universal jurisdiction'.

The UK has universal jurisdiction over a small number of serious offences, which means a person accused of these crimes in another country can be prosecuted in a UK court. Such offences include certain war crimes, torture and hostage taking.

Lama was arrested in January 2013 while on leave in the UK from his post as a UN peacekeeper.

Lama denied that, while commanding officer of an infantry battalion in Nepal in 2005, he ordered the torture of two detainees.

Last month an Old Bailey (pictured) jury acquitted him of one of the charges but was unable to reach a verdict on the second charge. This week the CPS announced that it would not be seeking a retrial on the second charge. As a result, the court acquitted Lama of the second charge.

Jonathan Grimes, partner at London firm Kingsley Napley, which represented Lama, said the universal jurisdiction principle is important. However, Lama's case could cause police to carefully consider whether to take on similar cases in future, he warned.

'They will want to consider the practical implications such as the resourcing requirements and whether they can effectively investigate – especially if the evidence is all located overseas,' Grimes said.

However, Daniel Machover, partner at London firm Hickman & Rose, which specialises in international criminal jurisdiction, said there was no reason for this week's outcome to be seen as a sign that universal jurisdiction cases cannot or should not be prosecuted in the UK.

'The police and CPS must not be deterred by the decision not to re-prosecute Mr Lama,' Machover added. 'It remains as important as ever to bring these important cases to trial where the evidence supports charges of war crimes or torture.'

Hickman & Rose's client Janak Raut was the alleged victim in relation to the charge the Old Bailey jury was unable to reach a verdict on.

Machover said victims face an uphill struggle to secure criminal investigations abroad. 'On a practical level there are real difficulties in collecting high-quality evidence abroad for prosecution in countries like the UK,' he noted.

'It usually falls on NGOs and lawyers to collect the evidence locally. There are also huge political hurdles preventing foreign investigators from collecting evidence in conflict zones, and it is notable that the attorney general must give his or her consent to a prosecution.'

Despite the difficulties, Machover said it is clear the British legal system is capable of dealing with such cases.

Meanwhile Grimes said universal jurisdiction cases will continue to offer an attractive option for human rights campaigners.

He added: 'If institutions such as the International Criminal Court lose traction - for example if certain African countries make good their threat to withdraw (effectively preventing the court from bringing cases against nationals from such countries) - then the use of national courts to bring universal jurisdiction cases will become the only means to bring those accused of torture and war crimes to justice.'

GULF TIMES

Nepali officer cleared of torture charges by British court

A UK-based Nepal army officer accused of torturing suspected Maoist detainees was yesterday acquitted by a British Court, media reports said.

Lt Col Kumar Lama, 49, from St Leonards, London, allegedly ordered the torture of two suspected Maoist rebels, Kamal Husein and Janak Raut, who were held at the Gorusinghe barracks in Kapilvastu district of Nepal in 2005.

Charges against Lama were brought under section 134 of the Criminal Justice Act, which allows suspects to face trial before a British court even if their alleged offences are committed abroad and they are not UK citizens.

He was arrested in January 2013 while vacationing with family in the UK. He was on leave from his posting as a UN peacekeeper in South Sudan.

His solicitor, Jonathan Grimes, a criminal law partner at the law firm Kingsley Napley, said: "I am extremely pleased for Lama that this case is finally at an end and that he can put these allegations behind him."

Lama is the first person to be tried outside Nepal for alleged human rights violations and war crimes in Nepal under the universal jurisdiction.

"The case has already established that the door of universal jurisdiction for the victims of torture and other serious violations is open in the UK and beyond. The experiences that we have gained will help to find justice in other similar cases and to continue with our fight against impunity in Nepal," Kathmandu Post quoted Mandira Sharma, founder of rights NGO Advocacy Forum.

THE TIMES

Officer cleared of Nepalese torture claims

By Jonathan Ames

September 7 2016

<http://www.thetimes.co.uk/article/nepalese-officer-cleared-of-torture-claims-r2s085k6l>

A Nepalese army officer has been cleared at the Old Bailey of committing torture offences after a trial that cost taxpayers millions of pounds.

Colonel Kumar Lama, 49, had been accused of torturing two Maoist detainees in Nepal in 2005 during the country's civil war. The Nepalese government has been highly critical of Colonel Lama's arrest and prosecution.

Prosecutors told the judge that there was no longer a realistic prospect of conviction and that they would offer no further evidence. The trial had taken place over 18 months.

The case was brought under the Criminal Justice Act 1988 and the legal principle of universal jurisdiction, which allows the prosecution of individuals for torture and war crimes regardless of where the alleged offence took place. The only other case of its kind was that of Faryadi Zardad, an Afghan warlord, who was convicted of torture in 2005.

Colonel Lama was arrested in 2013 while on leave in the UK from his posting as a UN peacekeeper in South Sudan. Police were alerted to the torture allegations by a Nepalese human rights organisation, Advocacy Forum.

He was charged with two counts of torture and spent more than two months on remand at Belmarsh, the high-security prison in southeast London, before being released on bail.

His trial started in February last year but was halted a month later because interpreters were not sufficiently proficient in Nepalese. A second trial started in June this year.

On August 1 the jury found Colonel Lama not guilty of one of the two charges but could not reach a verdict on the remaining count. The CPS reviewed the evidence on the remaining count, resulting in yesterday's decision.

Colonel Lama's solicitor, Jonathan Grimes, said: "The past three and a half years has been an extremely frustrating and stressful period for Colonel Lama and his family. There have been unacceptable delays in bringing this case to a conclusion."

Mr Grimes said that the case had run into a number of difficulties, "in particular the complexities arising from the fact that most evidence was in Nepalese and that the witnesses were in Nepal".

The lawyer went on to say that prosecutors' reliance on evidence gathered by a Nepalese human rights organisation had proved to be a mistake. "In the course of the trial it was admitted by that organisation that some of its actions in gathering the evidence had been completely wrong."

Colonel Lama's legal team alleged that the human rights campaigners manipulated evidence, suggested changes to witnesses' accounts and sought to avoid disclosure of numerous different drafts of witness statements.

THE BRIEF

Wednesday 7 September

Nepalese officer acquitted in landmark torture case

A Nepalese army officer has been acquitted of torture in a landmark case costing millions of pounds that was brought in the UK despite the alleged crime taking place in Nepal.

Colonel Kumar Lama was acquitted at the Old Bailey yesterday in only the second prosecution for state torture offences brought in the UK. The case led to a diplomatic rift between London and Kathmandu.

Prosecutors told a judge at the Old Bailey that there was no longer a realistic prospect of conviction and that they would offer no further evidence in a trial that had lasted 18 months. Lama had already been acquitted of an early charge.

The case was brought in the UK under provisions of the Criminal Justice Act 1988 and the legal principle of universal jurisdiction, which allows the prosecution of individuals for torture and war crimes regardless of where the alleged offence took place.

The cases are rare: Lama's was the only one of its kind in the UK after that of Faryadi Zardad, an Afghan warlord who was convicted of torture in 2005.

Lawyers said that Lama's case was likely to set a precedent because the alleged offences were said to have been committed by a serving officer of the armed forces of a country with which the UK has friendly relations and in the course of his official duties.

Lama's solicitor, Jonathan Grimes, a partner at Kingsley Napley, a London law firm, said: "There have been unacceptable delays in bringing this case to a conclusion, none of which have been any fault of his. He has borne these delays with great patience and good spirit and has always trusted that justice would prevail."

Grimes said that the case had "run into a number of difficulties, in particular, the complexities arising from the fact that most evidence was in Nepal and in Nepalese and that the witnesses were located in Nepal.

"I hope that the CPS will reflect carefully on its selection and management of this case and will learn lessons for the future."

THE GUARDIAN

Nepalese officer cleared of torturing suspected Maoist detainees

By Owen Bowcott Legal affairs correspondent

6 September 2016

<https://www.theguardian.com/law/2016/sep/06/nepalese-officer-col-kumar-lama-cleared-torturing-maoist-detainees>

Col Kumar Lama was charged under rarely used clause of Criminal Justice Act allowing prosecution of alleged foreign war criminals

A Nepalese army officer has been cleared of torturing suspected Maoist detainees following years of investigation by Scotland Yard and two war crimes trials at the Old Bailey.

Lieut Col Kumar Lama, 49, was charged under a rarely used clause of the 1988 Criminal Justice Act that allows the prosecution in the UK of alleged foreign war criminals.

Lama was arrested in 2013 after settling in St Leonards-on-Sea, East Sussex, with his family. He had been serving as a UN peacekeeper in South Sudan shortly before being detained.

He was accused of mistreating prisoner Janak Raut during his country's civil war, which raged between 1996 and 2006. The Old Bailey trial heard that he presided over beatings of his alleged victim while in charge of the Goringhe barracks in Kapilvastu. Lama has always denied the charges.

It was claimed that one of Lama's more unusual torture methods was to allow a soldier's pet parrot to peck at the victims until they bled.

Lama first stood trial in February 2015 but the jury was discharged following the failure to provide sufficiently qualified translators to hear the evidence of about a dozen Nepalese witnesses who had been flown to the UK.

Last month, a second jury was discharged after failing to agree on a verdict on the remaining torture charge. On Tuesday, the Crown Prosecution Service announced it would offer no further evidence against Lama.

The prosecutor Duncan Penny, QC, said: "The crown has carefully and thoroughly considered the evidence on the remaining count and there was no longer a realistic prospect of conviction."

The judge, Mr Justice Sweeney, told the jury: "It is relatively rare for so many witnesses to require interpreters and indeed for so many problems to arise in one case." He assured Lama that he would face no further action in British courts.

Section 134 (sub-section 1) of the Criminal Justice Act permits prosecution of foreign war criminals in the UK under so-called universal jurisdiction. The UK is one of 159 signatories to the UN convention against torture and perpetrators must be tried in the country in which they are arrested.

The two trials are estimated to have cost about £1m. His solicitor, Jonathan Grimes, a criminal law partner at the law firm **Kingsley Napley**, said: "I am extremely pleased for Col Lama that this case is finally at an end and that he can put these allegations behind him. The jury's verdict in August on one of the charges, and today's decision by the CPS on the other, confirm what Col Lama has always maintained: that he never ordered, or was complicit in, torture.

"The past three-and-a-half-years has been an extremely frustrating and stressful period for Col Lama and his family. There have been unacceptable delays in bringing this case to a conclusion, none of which have been any fault of his. He has borne these delays with great patience and good spirit and has always trusted that justice would prevail. I am pleased that Col Lama, an officer who has served with distinction with both the Nepalese army and the UN, will now be able to return to Nepal and resume his military career.

"This case has run into a number of difficulties, in particular, the complexities arising from the fact that most evidence was in Nepal and in Nepalese and that the witnesses were located in Nepal. The reliance by British police and the CPS on evidence gathered by a human rights organisation, Advocacy Forum, has proven to be a mistake."

Janak Raut, one of the alleged victims, said he respected the jury's decision but hoped the government of Nepal would consider legal action.

Daniel Machover, a solicitor at the law firm Hickman & Rose, which represented Raut, and an expert in international criminal jurisdiction said: "We have worked very hard on a number of these cases and it is a source of great satisfaction to know that the UK takes seriously its international obligation to investigate and where appropriate to prosecute alleged crimes of this nature."

Mandira Sharma, founder of Advocacy Forum, said: "Regardless of the decision not to re-prosecute Mr Lama, the case has already established that the door of universal jurisdiction for the victims of torture and other gross violations is open in the UK and beyond. I just hope the government of Nepal understand the gravity of the issue at hand and start a process to end impunity for torture and gross violations of human rights in Nepal."

PRESS ASSOCIATION

UK-BASED NEPALESE COLONEL ACCUSED OF TORTURE ACQUITTED AS CASE COLLAPSES

By Emily Pennink, Press Association Old Bailey Correspondent

6 September 2016

Also published by:

The Argus

Midhurst & Petworth Observer

Mid Sussex Times

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Eastbourne Herald

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West Sussex County Times

Sussex Express

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The landmark case of a UK-based Nepalese colonel accused of torture in his home country more than 10 years ago has collapsed amid fierce criticism.

Kumar Lama, 49, from St Leonards, East Sussex, had faced a retrial at the Old Bailey after a jury earlier this year cleared him of one charge of torture but could not decide on a second.

But at a hearing today, prosecutor Duncan Penny QC said the Crown had "carefully and thoroughly considered the evidence on the remaining count and considered there was no longer a realistic prospect of a conviction."

He said the Crown no longer sought a retrial and Mr Justice Sweeney formally acquitted Lama.

The decision not to go ahead with the retrial was made following inconsistencies in the evidence which the Crown was previously unaware of.

The case dated back to his time at an army barracks in Nepal in 2005 during the country's civil war in which more than 15,000 people were killed.

It was alleged that while acting as the commanding officer of an infantry battalion, he ordered the torture of two detainees held at the barracks.

He was arrested in January 2013 while on leave in the UK from his posting as a UN peacekeeper in South Sudan.

He was charged under section 134 of the Criminal Justice Act which allows suspects to face trial before a British court even if their alleged offences are committed abroad and they are not UK citizens.

The original trial last year had to be abandoned after it was blighted with problems over finding Nepalese interpreters. In all, the case is estimated to have cost the taxpayer around £1 million.

After Lama was cleared, his solicitor Jonathan Grimes, of **Kingsley Napley**, said: "I am extremely pleased for Colonel Lama that this case is finally at an end and that he can put these allegations behind him.

"The jury's verdict in August on one of the charges, and today's decision by the CPS on the other, confirm what Colonel Lama has always maintained: that he never ordered, or was complicit in, torture.

"The past three and a half years has been an extremely frustrating and stressful period for Colonel Lama and his family. There have been unacceptable delays in bringing this case to a conclusion, none of which have been any fault of his.

"He has borne these delays with great patience and good spirit and has always trusted that justice would prevail. I am pleased that Colonel Lama, an officer who has served with distinction with both the Nepalese Army and the UN, will now be able to return to Nepal and resume his military career."

He added: "I hope that the CPS will reflect carefully on its selection and management of this case and will learn lessons for the future."

A Crown Prosecution Service spokesman said: "This was an unusual and challenging case and we respect the decision of the jury. We will not be seeking a retrial having considered the developments at the trial."