

The State of Assam Vs. Ram Gopal Agarwalla and anr.

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Court : Guwahati

Decided On : Feb-20-1964

Judge : G. Mehrotra, C.J. and S.K. Dutta, J.

Appellant : The State of Assam

Respondent : Ram Gopal Agarwalla and anr.

Judgement :

S.K. Dutta, J.

1.This is an appeal against acquittal. The prosecution case is that on 17.12.56 at about 4 or 5 P.M. accused Pannalal Agarwalla and his son Ram Gopal Agarwalla together with two or four other persons committed theft of a truck being truck No. ASJ1901 belonging to the complainant Nathuram Darjee from the garage in his residence in the Moran market area. Natnuram's uncle P.W. Jesraj Darjee who was standing by the side of the vehicle protested, but he was pushed away and threatened. The truck was driven away by accused Ram gopal Agarwalla. Nathuram was not at home at that time, but was in the Moran market. When he was coming back he saw Ram gopal on the way driving his vehicle. On reaching Home, he learnt from Jesraj that the vehicle was taken away by the accused forcibly. Thereafter at about 7-30 P.M. he lodged a First Information Report at the Moranhat Police Station, which was at a distance of less than a furlong from his house. The Police after investigation submitted charge-sheet against both accused

Ram gopal and Pannalal. Pannalal was discharged but the learned Sessions Judge ordered further enquiry under Section 436, Criminal P. C. into the case, and ultimately both the accused were summoned under Sections 379/114, I.P.C. but they were acquitted. The matter came up before this Court and this Court ordered a re-trial. At the re-trial accused Ramgopal was charged under Section 379, Indian Penal Code and Pannalal under Section 379/114, Indian Penal Code. Both of them were convicted and sentenced to rigorous imprisonment for six months each. On appeal, the Assistant Sessions Judge, Upper Assam Districts at Jorhat acquitted the accused.

2. The defence case is that Jesraj took Rs. 2500 from accused Pannalal on a promissory note. As he failed to repay the loan, he agreed to sell the truck and took another sum of Rs. 2000/- from Ramgopal on the day of occurrence and gave the truck out of his own accord at a price of Rs. 4,500/- the loan of Rs. 2500/-being adjusted towards the price of the truck. When Jesraj thus made over the truck to accused Pannalal, Pannalal ordered his driver D.W. Ramsing Gore to drive the same to his shop.

3. It is not denied that Pannalal took the truck from the garage of the complainant to his shop. But criminal intention is the gist of the offence of theft and it is the intention of the taker which must determine whether taking away of the vehicle was a theft or not. If the prosecution story is believed, that the truck was taken away by force in spite of protest by Jesraj, then the criminal intention is obviously there and the removal of the truck will constitute a theft. So, we have to examine first how far the story that the truck was taken away in spite of protest by Jesraj can be believed.

4. It may be noted that the occurrence took place in a market place on a hot day. If a truck was taken away from the garage of the owner forcibly by some culprits in broad day-light in a crowded market place, it was expected that there would be a hue and cry. But there was no such hue and cry. On the other hand, although the place of the complainant is at a distance of less than a furlong from the Police Station, the complainant lodged the First Information Report at least after two hours and a half of the occurrence. The complainant Nathuram, says that he saw

the truck being driven away by accused Ramgopal, but did not raise any cry saying, that Ramgopal was taking away his vehicle. He further says that he immediately ran to the than after the discovery of the theft. But in fact although the occurrence took place at about 4 or 5 P.M., the First Information Report was lodged only at 7.25 P.M. Nathuram further deposes that he asked Jesraj why he allowed the accused to take away the vehicle and asked him to go and bring it back. According to Jesraj he protested when the vehicle was taken away, but Ramgopal caught hold of him by the neck and pushed him down. He says that when Nathuram asked him to bring back the truck, he went to the accused, but the accused wanted to assault him Jesraj was a man aged about 84 years. If it was a fact that the truck was taken away forcibly after Jesraj was assaulted, it is not understood why Nathuram would send his aged uncle Jesraj to bring back the truck from the house of the culprits instead of getting police help specially when the Police Station was at a distance of less than a furlong. The shop of Pannalal was also just near the Police Station. The Officer-in-charge of the Police Station deposes that on the day of occurrence in the afternoon before dusk, he was in the shop of Pannalal as a meeting was to be held in the school compound in front of his shop He says that one Sri Hazarika, Supply Inspector was with him in the shop but that he did not notice if Jesraj also appeared there. D.W. 2 Kashinath Deka says that when he went to attend the meeting, he entered the shop of Pannalal where they took tea. According to him, Jesraj was also there and he also took tea with them. He further says that he learnt that Pannalal had purchased a vehicle. Although the officer-in-charge of the Police Station says that he did not know of any transaction, it appears that when the complainant went to lodge the First Information Report, he put him the question if the complainant took any money from any person in order to sell the vehicle. This shows that the Police Officer also heard of some sale transaction. In these circumstances, it is difficult to believe the story that the truck was taken away by force from Jesraj. Apparently, Jesraj consented to the removal of the truck.

5. It is argued before us that Jesraj was not the owner of the truck-and as such his consent was immaterial and the accused acted dishonestly even if they took away the truck with such consent. But it appears from the evidence of the complainant that Jesraj was the elder brother of his paternal grand-father. According to P.W. 4

Gadadhar Lohai, one Debidutta and the father of the complainant are brothers. Jesraj, Debidutta and the father of the accused lived in the same house and Jesraj was the old man in the house. In such circumstances, the accused might have bona fide believed that Jesraj was the Karta of the family, and therefore, had the right to sell the truck. Thus the accused acted in the exercise of a bona fide claim of right, and this being so, they cannot be convicted for any offence of theft. If a person takes another man's property, believing, under a mistake of fact that he has a right to take it, he cannot be guilty of theft. As held by the Supreme Court in the case of *Chandi Kumar Das Karmarkar v. Abanidhar Roy*, Reported in : 1965 CriLJ496 where the removal of a moveable property is in assertion of a bona fide claim of right, the act does not constitute a theft although it may amount to a civil injury.

6. There is, thus no force in this appeal which is dismissed. The accused are discharged[^] from the liability of the bail-bonds.

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