

Emperor Vs. Hari Ramji

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Court : Mumbai

Decided On : Dec-13-1906

Reported in : (1907)9BOMLR27

Judge : Batty and ;Heaton, JJ.

Appeal No. : Criminal Appeal No. 449 of 1906

Appellant : Emperor

Respondent : Hari Ramji

Judgement :

Batty, J.

1. In this case it is well established that the topa and tambya and a watch and a chain were stolen property. Also that the first two belonged to one owner Ex. 2 and the third to another owner Ex. 3. Also that all three were found in the possession of the accused. The third article, the watch with the chain, was in the possession of the accused within one month after the theft deposed to by Ex. 3. For Ex. 4 proves that he obtained it from the possession of the accused eight months before his deposition and No. 3 says that the theft was nine months before the same date. Now possession after recent theft raises ordinarily a presumption either that the person in possession is the thief or had dishonestly received the property knowing it to be stolen. In R. v. Crowhurst it was said :-

In cases of this nature you should take it as a general principle, that, where a man in whose possession stolen property is found, gives a reasonable account of how he came by it, as by telling the name of the person from whom he received it and who is known to be a real person, it is incumbent on the prosecutor to show that that account is false, but if the account given by the prisoner be unreasonable or improbable on the face of it, the onus of proving its truth lies on him.

2. The accused in this case says that he obtained the topa and tambya from one Meherji and not from the actual thief Jagu, who says he handed them for possession to the accused. Meherji's evidence with regard to the topa and tambya, is that he was never in possession of them on his own account, but had only a permissive detention of those articles from Jagu. So that the accused in receiving the topa and tambya from Meherji was receiving from the constructive possession of Jagu. As to the watch and chain, there was no such acquisition of title as to negative the presumption arising from possession of stolen property soon after the theft. It was for the accused to explain that possession, but his account seems to be of so shadowy a character as to require no rebuttal, for it shows an appropriation by accused, without any enquiry, of property to which the accused must have known he was not entitled and in no way amounts to such an explanation as would be required in order to answer the presumption arising from Section 114 of the Evidence Act.

3. Again we think the possession of the property stolen from two different owners is a circumstance which under Section 14, Illustration (a) of the Evidence Act must be borne in mind in estimating the probability of guilty knowledge in the accused. A scienter is sufficiently established in the present case. We must therefore set aside the order of acquittal and convict the accused of the charge.

4. We sentence him to twelve months' rigorous imprisonment.

5. We also pass a sentence of fine of Rs. 50 and direct that in default of payment, the accused do suffer further rigorous imprisonment for one month.