

Rainu Vs. the Crown

Rainu Vs. the Crown

SooperKanoon Citation : sooperkanoon.com/338176

Court : Mumbai

Decided On : Sep-16-1949

Reported in : AIR1950Bom92; 1950CriLJ510

Judge : Hemeon, J.

Appellant : Rainu

Respondent : The Crown

Judgement :

ORDER

Hemeon, J.

1. The applicant Rainu was convicted and sentenced to undergo two concurrent terms, each of 6 months rigorous imprisonment, and to pay a fine of RSection 100 under 33. S80 and 454, Penal Code, by the First Olasa Magistrate, Rai-pur; and his appeal was dismissed by the Sessions Judge, Raipur. He has now come up in revision to this Court.

2. The prosecution case briefly stated was as follows. Shakuntala Bai (P.W. 1) is the wife of Manrakhanlal, who is the brother of the applicant Rainu but lived separate in mess and reBidenoe from him. On 36th May 1947 when Shakuntala Bai was staying at her maternal uncle's house in Rajim, he received the telegram Ex, P 8 which purported to have come from her father-in-law, Bhangi PraBad

(P.W. 6) and asked him to send her to Arang at an early date. She accordingly went to Arang with her box of jewellery and placed it in the room occupied by her in a house at that place. She then learnt from her father-in law that the applicant and not he had Bent the telegram to her at Rajim.

3. Next morning, she chained the room and went to have a bath at the well in the compound. On return, she found the room locked and the applicant who said that he had looked it told her to leave the house. When her father-in-law tried to break open the lock, the applicant beat him. turned him out of the house and repeated his direction to her to leave the house. She acisoHlingly went to her mother's house and learnt two days later that the applicant had broken open the lock and removed her jewellery and other articles to Mahaeamund. After this, her father-in-law went to that place and on return to Arang told her that the applicant had shown him her jewellery in the presence of same persons.

4. The applioant in examination admitted that he had sent the telegram, Ex. P-8, but claimed that he had done so at the instance of his father, Bhangi Prasad. He also admitted that he had locked up her room on 28th May 1947 when she was having a bath, but he denied that he had subsequently refused to open it. He stated that Shakuntala Bai and Bhangi Prasad bad left the house and that on 17th June 1947, be had gone to Mahasamund and taken with him the box and the ornaments in it, but be denied that lio had broken open the lock. He also declared that the ornaments did not belong to Shakuntala Bai, but were the family pro. perty. In defence he asserted that they were part of the joint family property and should be thrown into the hotchpot for the purposes of the partition between his father Manrakhanel and himself. He was, he continued, not actuated by any dishonest motive and he had merely asserted a bona fide claim to the ornaments in question. Two witnesses were examined in defence, viz. Hiralal and Ranadas and they stated that when Shakuntala Bai was married she had not brought any ornaments from ben parents. Hiralal added that the ornaments in question were joint family property and that Bhangi Prasad had not given the applicant his share in that property.

5. Bhangi Prasad (P.W. 5) averred, however, that he had not inherited any ancestral property, that whatever property he had came from his income as a mukhtar, that he had out of affection given a share of his self-acquired property to his two sons and that this, so far as the applicant was concerned, consisted of a house and some ornaments.

6. Concerning the sequence of events relevant to the case his version was that the applicant arrived in the house at Arang on 21st May 1947. Shakuntala Bai arrived two days later, the applicant put a lock on her room next day (27th May 1947) and when he (p.w. 5) asked him to open it, the applicant knocked him down. A few days later, Bhangi Prasad affixed his own lock beside that of the applicant; and on 16th June 1947, the latter broke open that lock, removed the box of ornaments and went to Mahasamund. Two days later, Bhangi Prasad went to that place and asked the applicant to produce the box. He at first refused to do so but eventually did so and it was sealed.

7. On 2nd July 1947, Bhangi Prasad again visited Mahasamund, but the applicant refused to return the box and after it had been opened, the list ex. P-1 of its contents was prepared and signed. All of them, according to the witness, belonged to Shakuntala Bai and, with the exception of 4 ornaments which he had prepared for her, had been presented to her by her own parents. After the list had been drawn up the box was re-sealed and returned to the applicant in the presence of Jhaboolal (P.W. 3) while Bhangi Prasad retained its key. Shakuntala Bai's complaint Under Sections 879 and 457, Penal Code was not filed until 2nd September 1947.

8. The factual findings concerning the applicant's breaking open of the lock placed by Bhangi Prasad on the room in the house at Arang and of his removal of the box of ornaments therefrom were based on good material and cannot be disturbed in revision. The applicant was in the circumstances liable to be convicted under S. 80 and 461, Penal Code, unless he was not animated by a dishonest intention and was asserting a bona fide claim of right. A claim of that kind must, as was held in *Arfan Ali v. Emperor* (1917) 66 : A.I.R. 1917 Oal. 648 : 17 Cri. L.J. 456 be an honest one, albeit unfounded in law or in fact, and if it is not in

good faith but merely a colourable pretence to obtain or keep possession of property) it will not avail as a defence.

9. In the present case, clearly enough, the applicant considered that the ornaments were not Shakuntala Bai's stridhan property but part of the joint family property, and it would also appear that he was desirous of securing a share in that property. This was denied to him but he did not cease to have hopes thereto and he acted in the manner described above in order to have in his possession some of the property which he regarded as joint family property.

10. It is true that he had on 21st June 1918, disingenuously stated in a memorandum to the trial Court that he was not in possession 'of any disputed property alleged to have been stolen', 'but he had in a previous memorandum on 8th April 1948, declared that he was a member of a joint family and as such joint owner and possessor of the ornaments. This too was the stand taken by him in examination on 10th November 1948 and in defence; and the evidence adduced by him was directed to showing that he was a member of a joint family and that the ornaments were joint family property.

11. His conduct vis-a-vis the ornaments in Mahasamund was entirely consistent with the position taken by him in the case and Jhaboolal (P.W. 8), who signed and retained the list of ornaments, affirmed that it was prepared because there was a dispute between Bhangi Prasad, Manrakbanlal and the applicant with regard to the distribution of the ornaments. It is also necessary to point out that the applicant had agreed to the sealing of the box containing them on 17th June 1947 and to the listing of its contents as well as its resealing on 2nd July 1947 and that the key of the box did not leave Bhangi Prasad's possession.

12. At the same time, both Courts have held that the ornaments were Shakuntala Bai's stridhan property, were not ancestral property and could not be partitioned. In view of these findings for which there was adequate material on record, the applicant's asserted claim of right cannot be said to be bona fide and can be said to be a mere colourable pretence to retain possession of property to which he was not entitled. In *Empress v. Girdhari*, i, c. p. 1, e. 174, a weaker case than this, a son who had quarrelled with his father and appropriated to his own use part of the

family property against the will of his father, who was manager of the property, was held to have been rightly convicted for theft.

13. In *Bhagya v. Crown* 1988 N. L. 3.802 a creditor, who was owed Rs. 5 by a debtor, seized the leather water bag on the debtor's buffalo and took it away with the intention of forcing the complainant to pay his debt. Grille J., in repelling the creditor's contention that the removal implied no dishonest intention remarked that the clear intention was to retain the property until such time as the debt was paid and if it were not paid to keep it for good. That case was in many ways in part *materia* with the present case, but the case of *In re Perumal Konan* : AIR1941 Mad71 , cited in the applicant's behalf was otherwise for the reason that although the temples were broken into and the idols removed therefrom, the taking was not dishonest. The case of *Harnam Singh v. Emperor* 6 Lab. 56 A. I.R. 1924 Lab. 463 : 25 Cri L.J. 697 can also be distinguished from the case before me. The plea taken in it was that the articles removed by the accused belonged to him and that he removed them because his employees failed to carry out their part of the contract which was that they would either take him as a partner in their business or purchase the articles from him for their press. There was thus a bona fide assertion of right on the part of the accused with regard to the articles removed, the claim was not a mere pretence and the complainants had not proved that the articles removed belonged to them.

14. The applicant's convictions Under Sections 380 and 454, Penal Code are accordingly affirmed. The case is not, however, one for severe punishment. Although the applicant acted with highhandedness and by taking the law into his own hands caused wrongful loss to Shakunfcala Bai and wrongful gain to himself, he was not an ordinary thief or housebreaker. He is related to her by marriage and was suffering from the obsession that the other members of the family were depriving him of a share in the family property. The sentences of imprisonment are set aside and replaced by concurrent imprisonment until the rising of the Court under each of the aforesaid sections. The fine awarded, viz., Rs. 100 shall be increased to Rs. 200 and in default of payment the applicant shall undergo 2 months rigorous imprisonment.

15. Subject to these modifications, the application is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com