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In Re: Ameerjan

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Court : Karnataka

Decided On : Jan-02-1951

Reported in : AIR1951Kant34; AIR1951Mys34

Judge : Medapa, C.J. and ;Vasudevamurthy, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 342; Indian Penal Code (IPC), 1860 - Sections 489C; Evidence Act, 1872 - Sections 114

Appeal No. : Criminal Appeal No. 11 and Criminal Petn. No. 100 of 50-51

Appellant : In Re: Ameerjan

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : H.V. Krishna Rao, Adv.

Disposition : Appeal dismissed

Judgement :

Yasudevamurthy, J.

1. The accused who has appealed to this Court hag been convicted for an offence under Section 489-C, Penal Code and sentenced to rigorous imprisonment for three years by the 3rd Additional Sessions Judge, Bangalore Division. The case against him was that he was found in possession of 81 counter, feit ten rupee

currency notes on 23-10-1948. The learned Sessions Judge has found that the notes in question are counterfeit. The same is not seriously disputed before us and is amply established by the evidence of P.W. 10, Coin and Currency Expert attached to the C. I. D. Mad. ras and who has been trained in the Bombay Mint and Nasik Currency Press. The appearance of the notes also makes it clear that they are not genuine and though a few of them are quite crude imitations, quite large number of others look very similar to genuine notes.

2. The Sessions Judge has also found that the accused must be held to have been in possession of these notes with a view to use them as genuine or with the object that they may be used as genuine knowing or having reason to believe that they were forged ones. It is contended before us that conclusion of the learned Judge is not correct.

3. The manner in which the prosecution have tried to establish that the possession or control of the notes was with the accused is through evidence that the accused showed the place where they had been hidden by him. [After discussing the evidence the judgment proceeded:] Mr. Krishna Rao the learned counsel for the appellant, has argued that the house in which the notes were discovered does not belong to the accused ; that in fact the learned Sessions Judge has found to that effect and that, therefore, he cannot be said to be in possession of the rotes. It must be remembered that this house is incomplete and hag not been roofed. It is in the evidence of P. W. 4 that the walls are about 5 to 6 ft. high and that there would be no difficulty in going in that house with the help of a ladder. Moreover there is another very strong circumstance against the accused. Mustafa D. w. 4 to whom the house is said to belong, appears to he closely related to the accused though he was unwilling to admit it at first. The accused's sister is married to Syed Sab, his brother; and Syed Sab and one Hazam who has married another sister of the accused are trading together. The accused appears to own a neighbouring vacant site and in Ex. D-10 which is a document executed by Mus'afa Sab agreeing to pay ground rent to D. W. 2 for the site on which the house is built the open space to the south of Musrafa Sab's site is shown as belonging to the accused. Access into that house would, therefore, have been quite easy for the accused.

4. It was further contended for the appellant that this evidence is not sufficient to hold that the accused was in possession of the currency notes within the meaning of Section 489C, Penal Code and that the circumstance that the accused showed the place where the notes where hidden could not raise a presumption that the accused hid them there. It was argued that at the worst it would only mean that the accused knew that the notes in question were hidden in that place and nothing more. That place where these notes were found is not a public place in the sense that there was an unrestricted access to it. D. W. 4 Mustafa has deposed that only mud and sand were stocked in that incomplete house and that he used to lock the door to prevent children entering and wasting the mad and sand. It was apparently within the special means of knowledge of the accused that the notes were secreted in the place and he has not explained as to how he came by that knowledge. In his first statement before the Committing Magistrate he has not denied that he showed the place wherefrom the notes were recovered though he adds that the house is not his and that Mustafa Sab was getting it built. He later on apparently realised the significance of his action and in his statement before the Sessions Judge he has expressly denied that he took out notes from that house and gave them to the police. It was open to the accused to have at least stated in Court how he came to know that the notes were secreted there. Mr. Krishna Rao, learned counsel for the appellant, has argued that it is not part of the duty of the accused to have given any such explanation. We are not inclined to agree with him. The object of Section 342, Criminal P. C., is to enable the accused to explain the circumstances in the prosecution evidence which are against him. If the accused, when confronted with the large body of evidence to the effect that he took the police and showed them the place where the notes were secreted, kept silent or denied the whole affair, it would not be unnatural to presume that he had either secreted them there himself or knew who had done so. It would also not be unreasonable to presume that if someone else to his knowledge had so secreted them it is not at all likely that the accused would be shielding him but would disclose the name of the latter.

5. In support of his argument Mr. Krishna Rao has relief upon cases reported in Gianchand v. Emperor, A. I. R. (20) 1933 Lah. 314: (34 Cr. L. J. 1256) and Hirday Ram v. Emperor, : AIR1946 All4 . In the first of those cases it was held that it was

not enough that the offending article which was a revolver in that case was found in a place where the accused showed it. That case can, however, be distinguished as it was in evidence in that case that the accused's brother was a police Officer living in that house prior to the search and therefore entitled to have a revolver. In Hirday Ram v. Emperor : AIR1946 All4 the house where the accused pointed out the revolver was being resided in, not only by the accused but by other members of a joint Hindu family of which he was a junior member and naturally the Court refused to hold that he was in exclusive possession of the revolver. The present case is quite different on its facts. Under Section 114, Evidence Act the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in their relation to the fact of the particular case. We think in this case it would be perfectly reasonable to raise a presumption against the accused that he was in possession of the notes and had secreted them in the absence of any explanation by him as to how he came to be in the know of the place where from they were recovered. In 17 Mys. L. J. 158 Reilly C. J. bas observed that in considering what inference can properly be drawn from the possession by the accused of an incriminating article when no explanation is forthcoming from him as to how he came to be in possession of the, the Court was not bound by any rule of law and was merely considering a matter of reasonable inference and common sense; and with this we fully agree.

6. The learned Sessions Judge has in his judgment referred to and relied on a case in Sher Mahomed v. Emperor, A. I. R. (32) 1945 Lah. 27: (46 cr. L. J. 407). In that case the inference which a Court can properly draw from the circumstance that the accused leads the police to a place not his own or in his exclusive possession and from there produces some incriminating article hag, if we may say so with respect been well discussed in detail. It has been observed in that case :

'The question whether when an accused person leads the police to a place not his own or in his exclusive possession and from there disinters some incriminating article the Court is entitled to infer that the accused himself must have put that article there In such case depends on a variety of facts. No absolute rule on the point can be laid down. The evidence in such a case being circumstantial must in

order to sustain conviction, be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis than that of his guilt. The hypotheses that are possible in such cases are (1) that the accused saw someone bury the article there ; (2) that someone told the accused that the article lay buried in that place; and (3} that the accused himself alone or with others buried the article there. The third hypothesis is undoubtedly the most natural and prominent in such a case and if the other two hypotheses are excluded or are not reasonably possible there is no reason why the Court should not hold the third hypothesis proved. In determining which of these three possible hypotheses is more probable and presents such degree of certainty that the Court like a reasonable man ought to act upon the assumption of its existence, the Court shall have to consider a variety of circumstances in each case, e. g., the situation of the place where the article was buried, the accused's relationship with the person suspected, the topography of the place where the incriminating article was found and the explanation if any given by the accused of his knowledge of the place .... There is no rule of law that in such cases the Court is not justified in drawing the interference that the accused himself placed the incriminating article at the place pointed out by him. The true position is that it is for the Court in each case to draw any such inference as may be legitimate or reasonable in the circumstances. The question what inference from a relevant fact may be drawn as to the existence or otherwise of a fact in issue and with what degree of certainty is in each case amatter for the Judge to determine on the facts of that case and cannot be regulated by a generalization. The outstanding fact in such cases is that the discovery of the incriminating article from a place which is hidden from public view but is pointed out by the accused unmistakably shows that the accused was in some way privy to the felony. This is the most natural and prominent Inference which the Court will draw under Section 114, Evidence Act, and the fact being within the peculiar knowledge of the accused it is for him to show that he acquired knowledge of the place of concealment in some other way. If, therefore, the prisoner makes no attempt to explain how be acquired knowledge of the place, leaving aside the question of proving the truth of the explanation if given there is nothing in law to prevent, the Court from convicting him if after considering all the surrounding circumstances and bearing in mind the other possible hypotheses and

the principle that it is better that ten guilty men should escape than one innocent man be punished the Court comes to the conclusion that the accused himself must have put the article or articles there it not only may but it is its duty to convict.'

In that case the accused was charged of an offence of murder along with others. The question was whether the mare fact that the accused took the police to a cave in the jungle and pointed it out as the place where the body of the deceased lay was sufficient for his conviction under Section 201. The mouth of the cave inside which the dead body was found was coveted with stones. The accused denied having pointed out the cave in which the dead body was found. It was held that the accused must be found guilty as the only reasonable hypothesis left from those facts was that the accused himself or with the assistance of others put the body in the cave from where it was found and, therefore, was rightly convicted under Section 201.

7. It was further contended for the appellant that there was no proof in this case that the accused was intending to use the notes as genuine or that they may be used as genuine. If the intention of the accused was to destroy them he would have either torn them no or burnt them or otherwise disposed of them and not kept them fairly carefully in a pit specially dug for the purpose and covered with a stone. We have, therefore, no doubt in holding that it has been established in this case that the accused had in his possession these counterfeit currency notes intending to use the same as genuine or that they may be used aa genuine within the meaning of Section 489-C, Penal Code. The assessors were also unanimously of the view that the accused was guilty of an offence under the section.

8. In the result we consider that the judgment of the learned Sessions Judge is correct. The sentence cannot be said to be severe for an offence involving the currency of the country. We, therefore, confirm the conviction and sentence and dismiss the appeal. The appellant accused will surrender himself to the bail and undergo the unexpired portion of the sentence.

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