

State Vs. Miya Jani

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Court : Karnataka

Decided On : Oct-23-1959

Reported in : AIR1961Kant158; AIR1961Mys158; 1961CriLJ827

Judge : Nittoor Sreenivasa Rau, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 236, 237, 342, 364 and 364(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 379 and 411

Appeal No. : Criminal Revn. Case No. 40 of 1959

Appellant : State

Respondent : Miya Jani

Advocate for Pet/Ap. : M. Santosh, High Court Govt. Pleader

Judgement :

ORDER

1. This is a reference made by the District Magistrate, Raichur, expressing the view that the conviction of the accused in Criminal Case No. 203/18 of 1958-59 by the Munsiff-Magistrate, Raichur, is unsustainable and recommending that the conviction be set aside. The accused was charged with an offence under section 379, I. P. C., on the ground that he stole three football bladder? from a package in a wagon in the railway station yard, Raichur. The learned Magistrate, however, convicted the accused for an offence under Section 411, I. P. C.

The learned District Magistrate is of the opinion that in the circumstances of the case, the conviction of the accused for an offence different from that with which he was charged was not a formal defect as the accused, not having had an opportunity to meet the case against him under Section 411 I. P. C., was prejudiced. The learned District Magistrate also draws attention to the fact that the examination of the accused under Section 342, Criminal Procedure Code, was defective as the accused had not been questioned properly and further that the record of the examination does not bear a certificate in the handwriting of the presiding officer fulfilling the requirements of Section 364, Criminal Procedure Code. The learned Government Pleader supports the reference.

2. It is true that in certain circumstances an offence under Section 411 and one under Section 379, I. P. C. may come within the purview of Section 236, Criminal Procedure Code, and the accused may be charged with having committed one or the other of these two offences and by virtue of Section 237, of the Criminal Procedure Code, even if the accused is charged with an offence under Section 379, I. P. C., he may be convicted of an offence under Section 411, I.P.C.

But that would depend upon the circumstances of the case. If the case put forward by the prosecution is that the accused actually committed theft and without his being given an opportunity to meet a case under Section 411, I. P. C., which requires the proof of several ingredients to constitute the offence viz., knowledge or belief that the property in question is stolen and dishonest intention in receiving and retaining the stolen property, it cannot be said that the conviction for the latter offence is proper.

As already mentioned above, the learned District Magistrate is of the view that the accused had no such opportunity. On an examination of the record, I find that the case put forward by the prosecution was not that the accused was caught when he was removing the football bladders from the package in the railway wagon but that he was found in possession of three football bladders and that they formed part of the contents of a package in a railway wagon.

It would perhaps have been more appropriate to charge the accused with an offence under section 411, I. P. C. or to place alternative charges against him

under Section 379 I. P. C. and under Section 411 I. P. C, Even in the examination under Section 342, Criminal Procedure Code, it is the above case that is put to the accused and the latter's explanation is that he had not cut the package, that he found it torn and the bladders lying outside, that when he was carrying the bladders to replace them he was caught and that the Police when they took charge of him asked him to put the bladders in the pocket of his knickers wherefrom he produced them before the panches.

No doubt the prosecution witnesses have given evidence to the effect that the accused admitted having removed the bladders from the wagon. This has been denied by the accused and is really in the nature of an exits-judicialconfession and very little value can be attached to it. The accused's explanation cannot be said to be untenable on the face of it and is consistent with the facts established by the prosecution. Further as pointed out by the learned District Magistrate, the accused's statement has not been certified by the trial Magistrate as required under Section 364, Criminal Procedure Code.

All that is found at the end of the statement is 'Explained over in Urdu and admitted.' The Magistrate or Judge has to certify under big own hand that the examination was made in his presence and hearing and that the record contains a full and true account of the statement made by the accused. This is not a mere formality as it is intended to safeguard the interests of the accused whenever he is examined by any Magistrate or by any subordinate Court. The omission to make the prescribed certificate is a serious infirmity.

3. In the light of all these circumstances, it appears to me that the conviction cannot be sustained. The conviction, and the sentence are accordingly set aside and the accused is acquitted. The fine, if paid by him, shall be refunded.

4. Conviction and sentence set aside.