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G.K. Kumar Vs. State of Mysore

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Court : Karnataka

Decided On : Jan-23-1963

Reported in : 1963CriLJ466

Judge : A.R. Somnath Iyer, J.

Appellant : G.K. Kumar

Respondent : State of Mysore

Judgement :
ORDER

A.R. Somnath Iyer, J.

1. Accused 3 who has been convicted by the First Class Magistrate, Civil Station, Bangalore, of an offence punishable under Section 224 of the Penal Code and whose conviction has been confirmed by the Court of Sessions, is the petitioner before me.

2. According to the evidence of P. Ws. 1 and 2 which both the Courts believed, accused 3 was found in a place in Broadway Road, conducting a gambling operation. Accused, according to their evidence, was also there but before accused 1 could be apprehended, he decamped with the result that P. Ws. 1 and 2 were able to apprehend only accused 3. P. W. 1 is a head constable and P. W. 2 is a constable. When they were conducting accused 3 to the police station

together with the instruments of gaming which they seized, at a place near the new market, accused 1 and 2 who were near a shop prevented P. Ws. 1 and 2 from proceeding further and made it possible for accused 3 to escape from lawful custody. The evidence given by P. Ws. 1 and 2 was that accused 2 went into the shop or P. W. 3 and brought some bottles from within and threw them at P. Ws. 1 and 2 and that accused 2 also assaulted P. W. 2. When during skirmish P. W. 2 released his hold on accused 3, accused 3, according to their evidence, ran away. Accused 1 and 2 were convicted of offences punishable under Section 225 and 353 of the Penal Code and accused 3 was convicted of an offence punishable under Section 224 of the Penal Code. All the three accused appealed to the Court of Session but their convictions were affirmed.

3. Mr. Asif appearing on behalf of accused 3 urges that this is a case in which it can be said that the accused has committed no offence under Section 224 of the Penal Code. His first submission is that since there is no evidence of accused 3 having intentionally escaped from lawful custody and since the evidence if at all establishes that accused 1 and 2 rescued accused 3 by force for which accused 3 himself was not in any way responsible, no offence under Section 224 of the Penal Code could be said to have been committed by him.

4. This argument, it is clear, is not substantial since the evidence of P. Ws. 1 and 2 is to the effect that accused 2 threw soda bottles at P. W. 2 who released his hold on accused 3 and accused 3 ran away from the place. If that is what accused 3 did, no other conclusion is easier than that accused 3 took advantage of the scuffle and made a bid for freedom. If that is so, what he did was intentional escape from lawful custody which is clearly what Section 224 of the Penal Code makes punishable.

5. But it was said that one other ingredient which was necessary to establish that offence is not established in this case and that that ingredient was that accused i was charged with an offence when he ran away from the custody of P. W. 2. Mr. Asif urges that there is no evidence that at that stage accused 3 was accused of having been charged with any offence. He does not of course contend that the word charged occurring in Section 224 means a charge framed by a criminal Court

and admits that it is enough if the police officers who had apprehended him had the intention of incriminating him in the commission of an offence. Mr. Asif urges that even of that there is no evidence in this case since neither P. W. 1 nor P. W. 2 .has produced in the trial of the offence under Section 224 of the Penal Code, the instruments of gaming which they said had been seized from accused 3.

6. I do not consider the non-production of the instruments of gaming which P. Ws. 1 and 2 say they seized as anything which can be of any assistance to accused 3. Those instruments have to be produced only in the prosecution for an offence of gaming if a prosecution is commenced in respect of that offence. In a prosecution under Section 224 what should be proved is that the person who escaped from lawful custody had been charged with an offence not in the sense that a charge had been framed against him by a Court of law under the Code of criminal Procedure but in the ordinary sense of that expression, namely that he was accused of having been involved in an offence. P. Ws. 1 and 2 gave evidence that they apprehended accused 3 in. Broadway because they believed him to be involved in an offence of gaming. That according to them is the reason why they apprehended him and were taking him to the police station. Their conduct is not compatible with any other hypothesis than that accused 3 was accused of having committed an offence of gaming and was being taken to the police station for necessary investigation into that matter. In a prosecution under Section 224 of the Penal Code in order to establish that the person who is alleged to have escaped from lawful custody, was charged with an offence, it is not necessary that proof should be produced of any formal announcement having been made by the person who apprehended the accused that he had committed an offence. The question whether a person was or was not charged with an offence should depend upon the facts and circumstances of each case and the inference to be drawn from such facts and circumstances.

7. So tested, I do not find it possible to say that Mr. Asif is right in suggesting to me that when accused 3 was being taken to the police station by P. Ws. 1 and 2 he was being so taken to the Police Station without anyone having accused him of having committed an offence. It is manifest that accused 3 was believed to have committed an offence of unlawful gaming and that it was because he was accused

of that offence by P. Ws. 1 and 2 that he was taken to the police station for necessary investigation.

8. I am therefore of the view that the conviction of accused 3 cannot be disturbed.

9. But, Mr. Asif contends that the sentence of six months rigorous imprisonment imposed on accused 3 is excessive. It seems to me that the ends of Justice would he met if a sentence of three months' rigorous imprisonment is substituted and I make a direction accordingly.

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