

In Re: Shaik Server

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Court : Andhra Pradesh

Decided On : Mar-02-1956

Reported in : 1957CriLJ1393

Judge : Krishna Rao, J.

Appellant : In Re: Shaik Server

Judgement :

ORDER

Krishna Rao, J.

1. The petitioner has been convicted by the Stationary Sub-Magistrate, Gooty, of an offence punishable under Section 411, I. P. C., and sentenced to undergo rigorous imprisonment for three months. The conviction and sentence were confirmed by the District Magistrate, Gooty, on appeal, and therefore the petitioner has come up in revision.

2. The facts of the case are briefly these : On 19-12-1954, P.W. 2 a Watch and Ward sepoy working at Gtmtakal Railway Station, found that the seal of a goods railway wagon had been tampered with and reported the fact to the Assistant Station Master. On 21-12-54, P.W. 3, the Chief Parcel Clerk, checked the contents of the wagon and discovered that 3 out of the 66 parcels in the wagon were missing. Thereupon P.W. 7, the Railway Police Sub-Inspector, took up investigation and on 11-1-1955 searched the house of the petitioner who is a

sundry shop keeper at Guntakal, in the presence of mediators, one of whom was P.W. 5. He seized two gunny bags which were found in the petitioner's house. One of these gunny bags contained 4 pieces of cots-wool cloth M.Os. 1 to 4, and the other gunny bag contained six pieces of bed-ticking cloth M. O. 5 series.

3. At the trial, M.O. 5 series were proved to be six of the nine pieces of bed-ticking cloth belonging to Messrs. Davidass and Co., of Bangalore, which had been despatched to their customer at Ranipet in a goods wagon from Bangalore on 16-12-1954. The petitioner admitted that P.W. 7 recovered two gunny bags from his house but alleged that he did not know what they contained. His story was that three days prior to the search by P.W. 7, two persons named Basigadu and Buddodu had come to his shop with the gunny bags and asked him to give change for a ten-rupee note. He replied that he had no change, whereupon they borrowed Rs. 2 from him and went away leaving the gunny bags and saying that they would come back. Three days later, Basigadu reappeared with P.W. 7 and asked for the packages and the petitioner handed them over. In support of his story the petitioner examined D.W. 1, a lorry owner residing at Guntakal. D.W. 1 substantially corroborated the petitioner's version as to the circumstances in which the gunny bags were left with the petitioner. The learned Sub-Magistrate disbelieved D.W. 1 mainly because of certain minor discrepancies between his version and that of the petitioner. He further observed that even if D.W. 1's evidence is true, it was not possible to believe that the two strangers would have pledged M.Os. 1 to 5 series with the petitioner for a paltry sum of Rs. 2, He came to the conclusion that the petitioner must have received if not purchased the two gunny bag bundles, knowing that they were stolen. He applied the presumption under Section 114(a) of the Evidence Act and convicted the petitioner under Section 411 (I. P. C.). On appeal, the learned District Magistrate agreed with the reasoning and the conclusions of the Sub-Magistrate.

4. The main contention of the learned Counsel for the petitioner is that he did not know nor have reason to believe that the goods were stolen and that both the Magistrates have overlooked the fundamental principle that the onus of proving all the ingredients of the offence charged, never shifts from the prosecution, even in cases in which a presumption under Section 114(ia) of the Evidence Act can be

invoked. In my opinion, this contention is well-founded. The presumption under Section 114(a) is one of fact and not of law. It is permissive inference which a Court may logically draw from the facts proved, including the nature of the goods, having regard to the common course of natural events and human conduct in their relation to the particular facts. It is not a presumption of law in which case the Court would be required to reach that conclusion in the absence of evidence to the contrary. No doubt when a person denies altogether his possession of stolen goods not in common circulation which possession the Court finds to be proved, it is normally easier to draw an adverse inference as to the person's guilty knowledge. But when he accounts for his possession of the stolen goods, the question which arises for consideration is whether his explanation is inherently or palpably false or such as to cast a reasonable doubt as to his guilt - *Gangaraju v. State* : AIR1950 Mad778 ; *Bharadwaj Singh v. State* : AIR1952 Cal616 ; and *State v. Magha* . Thus when the charge is under Section 411, I. P. C., and the accused denies knowledge of the fact that the goods in his possession were stolen, the question is whether a prudent man ought, under the circumstances of the particular case to act on the supposition that the accused had that knowledge.

5. In the present case, the gist of the petitioner's defence is that he was not aware of the contents of the two gunny bags which were left with him by Basigadu and Buddodu. The mediator P.W. 5 himself admitted in his further cross-examination:

P.W. 7 brought three Madigas along with him to the house of the accused. They told us that they put the properties in the house of the accused.

This supports the petitioner's story that one of the persons who left the gunny bags with him came back with P.W. 7, the Sub-Inspector, and claimed the articles. The two gunny bags by themselves, irrespective of what was contained in them, would appear to have been worth something like a rupee. The petitioner would have been justified in trusting the persons who bought them for a hand-loan of Rs. 2 especially as he was unable to change their ten-rupee note. There is absolutely nothing to show that he accepted the contents of the gunny bags as a pledge for the loan or that he purchased them. The petitioner's petty shop was one on the verandah of his house and no adverse inference arises from his conduct in

keeping the articles inside his house especially when the purported owners did not return for a couple of days to take them. There is nothing in the evidence to show that the petitioner was aware of the valuable contents of the gunny bags left in his possession. The entire evidence is consistent with the story that he kept the gunny bags with him expecting the persons who had left them to come back and take them. As I have already indicated, the discrepancies between the petitioner's version and D.W. 1's evidence were of a minor character and were not such as to affect D.W. 1's veracity. But even if we disbelieve D.W. 1, as the lower Courts have done, the petitioner's story is to some extent supported by P.W. 5. As the articles have been traced to be stolen properties, it is not reasonable to expect the petitioner to adduce better evidence as to how they came to be deposited with him, such as that of the persons who handed them [over to him. The petitioner's explanation for his possession cannot be said to be inherently or palpably false. It shows that he kept the articles without any dishonest intention or knowledge and is sufficient to cast a reasonable doubt as to his guilt under Section 411, I. P. C.

6. The conviction and sentence of the petitioner are therefore set aside and he is acquitted. His ibail bond will be cancelled.

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