

Jagannath Gupta Vs. Rex

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SooperKanoon Citation : sooperkanoon.com/447757

Court : Allahabad

Decided On : May-31-1949

Reported in : AIR1950All9

Judge : Seth, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164; [Evidence Act, 1872](#) - Sections 91

Appeal No. : Criminal Revn. No. 1407 of 1948

Appellant : Jagannath Gupta

Respondent : Rex

Advocate for Def. : K.H. Misra, Deputy Govt. Adv.

Advocate for Pet/Ap. : E.V. David, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

Seth, J.

1. This application in revision is by one Jagannath Gupta who was convicted Under Section 411, Penal Code and sentenced to one year's rigorous

imprisonment. His conviction and sentence have been upheld by the Additional Sessions Judge of Kanpur.

2. A theft was committed at the house of one Ganga Ram on the night between 11th and 12th June 1947. The prosecution case is that the gold necklace, Ex. 1, is one of the items of property which was stolen during that theft. The police received information from one Rup Narain that the stolen necklace was in the possession of applicant Jagannath Gupta. The police party accompanied with Rup Narain and a First Class Magistrate, Mr. Shah Aziz Ahmad, went to the house of Jagannath Gupta. According to the prosecution case, the Sub-Inspector and Rup Narain both asked the applicant Jagannath Gupta to bring out the necklace which was given to him as his share of the theft. Jagannath Gupta hesitated for some time but when the Sub-Inspector threatened that he would make a search of the house Jagannath Gupta went inside, brought out the necklace and handed it over to the police. This fact has been taken into account by the Courts below in arriving at the finding that Jagannath Gupta had retained the stolen property with the knowledge that it was stolen property.

3. Mr. Shah Aziz Ahmad, the Magistrate who accompanied the raiding party, came into the witness box and deposed to what had happened at the time when the necklace was demanded from Jagannath Gupta and was handed over by him. The lower appellate Court has found upon evidence that the necklace, Ex. 1, is the necklace that was stolen from the house of Ganga Ram and has also found that it was retained by the applicant Jagannath Gupta with the knowledge that it was stolen property. The lower appellate Court has also disbelieved the story put forward by the applicant that the necklace was his own having been in the use of his wife. It is obvious that in arriving at this finding about the guilty knowledge of the applicant the Courts below have placed great reliance on the statement of Mr. Shah Aziz Ahmad.

4. It is contended by the learned counsel for the applicant that the statement of Mr. Shah Aziz Ahmad was inadmissible. He has placed reliance upon a decision of their Lordships of the Privy Council in *Nazir Ahmed v. King Emperor*. This ruling has no application to the present case. The question for decision before their

Lordships of the Judicial Committee was whether a Magistrate was competent to prove orally a confession made by an accused person to himself. It was contended before their Lordships that if a Magistrate records a confession, he is bound to follow the procedure laid down Under Section 364, Criminal P. C., but if he does not reduce it to writing there is nothing in law to prevent him from deposing to the confession made to him in the same manner in which it is competent for an ordinary citizen to depose to a confession made in his presence and hearing. Their Lordships held that when a confession is made by an accused to a Magistrate in the course of an investigation the Magistrate must proceed Under Section 164, Criminal P. C. or not at all and that a Magistrate could not depose to an oral confession made to him.

5. Mr. Shah Aziz Ahmad was not examined in this case to prove any confession made by the applicant Jagannath Gupta. His evidence was directed to prove what was said by Rup Narain and the Sub-Inspector to Jagannath Gupta and what Jagannath Gupta actually did in his presence. This is not evidence of any confession and does not come within the rule laid down in Nazir Ahmad's case .

6. The next contention of the learned counsel for the applicant is that the identity of the necklace, Ex. 1, has not been established with the necklace stolen from Ganga Ram's house. This is a pure question of fact and I am unable to say that on the evidence as it existed upon, the record the lower appellate Court could not have reasonably arrived at the finding that the identity was established.

7. In my opinion, there is no force in either of the two contentions put forward by the learned counsel for the applicant.

8. Lastly, the learned counsel has contended that the sentence is severe and should be reduced. In my opinion, the sentence is not at all severe.

9. This application in revision is, therefore, rejected. The applicant shall surrender to his bail and serve out the rest of the sentence awarded to him. His bail bonds are cancelled.