

Jagannath Vs. Emperor

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Court : Allahabad

Decided On : Sep-21-1944

Reported in : AIR1945All19

Appellant : Jagannath

Respondent : Emperor

Judgement :

ORDER

Mathur, J.

1. This is a revision application by one Jagannath who was convicted under Section 380, Penal Code and sentenced to one year's rigorous imprisonment. His appeal to the Sessions Judge of Ghazipur was rejected. It appears that one Mahindar Tiwari of village Gadipur found that his buffalo was missing from his house on 3rd October 1943. He made a search for the animal and, when unsuccessful, lodged a report in the police station on 8th October 1943. On 13th October 1943 Thakur Prasad, a constable who was going on the road along with Bhima Chaukidar noticed that some persons were taking away the buffalo near a village called Pakva Andhar. The constable feeling suspicious, questioned the applicant Jagannath as to their destination. Upon this, it is alleged, that Chandar Pal who was one of the party took to his heels and the applicant was arrested on the spot. The applicant at once stated that he had purchased the buffalo from

Chandar Pal, who had run away, for Rs. 132. Chandar Pal and two others were subsequently arrested and all of them were put on their trial. Two of them, namely, Sat Ram and Sheonath were discharged by the learned Magistrate at the very outset holding that there was not the least evidence against them. The trial proceeded against Chandar Pal and the applicant with the result that Chandar Pal was acquitted and the applicant was convicted as stated above.

2. The learned Magistrate has dealt with many discrepancies in the prosecution case. He has pointed out that while in the first information report lodged by Thakur Prasad, constable, it was mentioned that the man who held the buffalo was the one who ran away, the witnesses who were produced to corroborate Thakur Prasad constable, namely, Jagdish and Rajbali deposed otherwise. They stated that the applicant Jagannath was holding the buffalo. There was also a discrepancy about the time of the arrest. An attempt was made by the prosecution to prove that the applicant was seen driving the buffalo at different times of the day but this evidence has been totally disbelieved. It is also very significant that Bhima Chaukidar who was alleged to be accompanying Thakur Prasad and who was admittedly on terms of enmity with the applicant was not even produced by the prosecution. Chandar Pal was acquitted among other things, on the ground that no identification parade was held and the witnesses did state that he was not known to them from before. From this it will appear that the prosecution failed to prove a positive case that the applicant along with others was taking away the buffalo, which was stolen property, on the road. As a matter of fact, all direct evidence against all the accused having failed, the applicant was convicted merely on account of his admission that he had purchased the cattle from Chandar Pal. The learned Magistrate has remarked:

As regards Jagannath accused, the evidence against him is also very poor and I would have acquitted him straight away but for the fact that from his own statement the recovery of buffalo from his possession is proved. He is unable to establish his case about its purchase from the other co-accused, Chandar Pal.

It was argued before the learned Sessions Judge that the Magistrate had shifted the burden of proof to the accused. The learned Sessions Judge has met this

argument by making the following observations : 'The learned Magistrate, I may point out, does not say that the appellant had failed to discharge the burden which was shifted on to him. The learned Magistrate simply draws a presumption from the facts proved before him which he was perfectly justified in doing. It was proved before him that Mahindar Tiwari had lost his buffalo by theft. The buffalo was recovered from the possession of the appellant under suspicious circumstances. The evidence on behalf of the appellant relating to the purchase of the said buffalo which had belonged to Mahindar Tiwari was held to be unsatisfactory by the learned Magistrate.'

This makes it clear that the learned Sessions Judge expected the applicant to prove his defence in order to rebut the presumption that arose against him under Section 114, Evidence Act. In view of the entire facts of the case, I am of opinion that the applicant was entitled to an acquittal. There was certainly a presumption against him and he was required by the law to account for his possession. It does not necessarily mean that he should prove his plea to the hilt. The other man who was with him having run away may have been the thief and the explanation given by the applicant could not be entirely ruled out. In the Privy Council case reported in *Otto George Gfeller v. The King* (43) 30 A.I.R. 1943 P.C. 211 their Lordships have quoted certain remarks from a case reported in *Rex v. Abramovitch* (1914) 84 L.J.K.B. 396 and have stated that the quotation correctly states the law applicable to a case where recently stolen property is recovered from possession of an accused person. The quotation is as follows:

That upon the prosecution establishing that the accused were in possession of goods recently stolen they may in the absence of any explanation by the accused of the way in which the goods came into their possession which might reasonably be true find them guilty, but that if an explanation were given which the jury think might reasonably be true, and which is consistent with innocence although they were not convinced of its truth the prisoners were entitled to be acquitted inasmuch as the prosecution would have failed to discharge the duty cast upon it of satisfying the jury beyond reasonable doubt of the guilt of the accused.

I have looked up into the report of this English case. The judgment was delivered by Lord Reading C. J. At one place his Lordship has observed:

When one looks at the passage in the summing up which has been criticised it does appear that it was never put to the jury that if they were satisfied that the explanation given by the applicant might reasonably be true, the Crown would not have established beyond reasonable doubt that the prisoners were guilty.

Giving the matter my best consideration the position to me appears to be like this:

(1) That when an accused person is found in possession of a property recently stolen the Court may draw a presumption that he is either the thief or has received the goods knowing it to be stolen unless he can account for its possession.

(2) This is a presumption which the Court is not bound to draw but it is in the option of the Court to draw it. But it does not, in any way, shift the burden of proof to the accused.

(3) The words 'can account for its possession' do not mean that the accused must prove it positively that he received the property in the manner indicated by him.

(4) If the explanation given is not inherently improbable or palpably false and the Court or the jury trying the case find it to be reasonably true, the adverse presumption shall be deemed to have been rebutted.

(5) The meaning of the words 'reasonably true' appears to be that the explanation must be sufficient to cast a doubt on the guilt of the accused and in that case unless the prosecution proves beyond reasonable doubt that the accused received the property knowing it to be stolen, the benefit of the doubt shall go to him.

3. In this view of the matter, I think that the explanation given by the applicant was certainly reasonably true inasmuch as it cast a doubt on the prosecution case that he had received the property knowing it to be stolen and therefore he could not be convicted merely on that presumption. I am supported in this view by the case in *Hori Lal v. Emperor* : AIR1933 All893 decided by Bajpai J. I therefore accept this revision application and set aside the conviction and sentence passed on the

applicant. As he is on bail he need not surrender. The bail bond shall be cancelled.

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