

Giyan Chandra Vs. Emperor

Giyan Chandra Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/449503

Court : Allahabad

Decided On : Sep-11-1936

Reported in : AIR1937All47; 166Ind.Cas.363

Appellant : Giyan Chandra

Respondent : Emperor

Judgement :

ORDER

Collister, J.

1. Giyan Chandra was convicted by a Magistrate on a charge under Section 411, I.P.C. He appealed to the Sessions Judge, but his appeal has been dismissed. He has now come in revision to this Court. It is proved that on 6th March 1935, a bicycle belonging to a Jain boy named Prakash Chandra, a resident of Bijnor, was stolen. The applicant is also a Jain and a resident of Bijnor, and his age is said to be 22 or 23. On 2nd August 1935 a cycle dealer named Muhammad Ali informed a Sub-Inspector that he had seen a youth going towards the Railway Station on a stolen bicycle. The Sub-Inspector at once went to the station, taking Muhammad Ali with him, and he there arrested the applicant in possession of a bicycle. It is proved by evidence and is not denied on behalf of the applicant that this bicycle is the one which was stolen on 6th March 1935, and is the property of Prakash Chandra. The defence is that Muhammad Ali, knowing that the applicant wanted to

buy a bicycle, sent a man along with him accompanied by a boy, who introduced him as Ibrahim, resident of Meerut. Ibrahim had this bicycle with him and in the end the applicant bought it for Rs. 31. He took a receipt from Ibrahim, which was attested by two witnesses, Mahabir Prasad and Parshotam Das, both of whom have given evidence in his defence and have proved their signatures on the receipt, (Ex. 12).

2. This defence was not accepted by the trial Court or by the Judge. The learned, Judge points out that Muhammad Ali, who was examined as a witness for the prosecution, contradicts the applicant's story, and he also emphasizes the fact that no-attempt was made by the applicant to call Ibrahim as a witness. Against this it is argued that Muhammad Ali's conduct may have been actuated by fear of the police and a guilty conscience and by a desire to throw the responsibility for the stolen bicycle on to the applicant. And as regards the calling of Ibrahim, when once the applicant knew that the machine was stolen property, he would naturally have little ground for optimism in respect of the evidence which Ibrahim might be expected to give if he were called into the witness box. On behalf of the prosecution my attention is drawn to the fact that the applicant made no enquiries from Ibrahim as to who precisely he was or what was his exact address; he was, satisfied with the recital in the receipt, that the vendor was a Sheikh, that his father's name was Fatehullah and that he was a resident of Meerut. He also apparently made no enquiry as regards the letter 'P' which was on one of the mudguards. This contention is not without, some force, but on the other hand it must be borne in mind that the applicant may have had faith in Muhammad Ali, and he says that the latter had sent a boy with, Ibrahim to introduce him to the applicant. The learned Judge observes:

This should also be noted and borne in mind that the said receipt was never produced by the accused-appellant before the police since the date on which he was arrested, and was only produced by him in Court on 26th August 1935.

3. This is true enough so far as it goes, but there is evidence to show that the existence of the receipt was mentioned at the very earliest moment. Bimal Saran is a witness for the prosecution. He is the father of Prakash Chandra, the owner of

the bicycle; and he states that in his presence at the police station on 2nd August 1935 the applicant declared not only that he had bought the bicycle from a man named Ibrahim, but also that he held a receipt. A few days after, on 12th August 1935, on an application for bail the Sessions Judge wrote an order in the course of which he stated that the accused's defence was that he had purchased this bicycle 31/2 months ago in the presence of responsible persons and that he held a receipt. Thus it is clear that the receipt was mentioned at an early stage. On the other hand it is somewhat suspicious that it was not actually produced before the police. The learned Judge has directed himself in the following manner:

The main question to be seen and determined by the Court in this case was, whether the defence story put forward on behalf of the accused-appellant was correct or not, and whether he had succeeded in proving that he had actually purchased the cycle from any Ibrahim of Meerut.

4. In other words the learned Judge threw the burden upon the applicant of proving his innocence. Presumably he had in mind Illus. (a) of Section 114, Evidence Act. Under that section the Court may, if the circumstances justify it, draw a presumption of guilt against a person who is in possession of stolen property; but the section does not lay down that whenever a person is in possession of stolen goods, a presumption of his guilt automatically arises. The illustration itself shows that the presumption will not arise unless¹ the accused is in possession of the goods soon after the theft and unless he is unable to account for his possession. If several months have passed, as in this case, or if the accused is able to give an apparently reasonable explanation of his possession of the stolen property, the presumption will not arise. Section 114, Evidence Act, does not relieve the prosecution of the onus of proving the accused's guilt in respect of a charge under Section 411, I.P.C.; the onus is there just as in the case of any other charge but under certain conditions a presumption may arise to alleviate it. It cannot be denied that there, are some suspicious circumstances against the applicant; but upon the whole matter I am of opinion that the prosecution has failed to establish the charge. Apparently the applicant made no effort to conceal the bicycle. I accordingly allow this application and set aside the conviction of the applicant and the sentence which has been passed upon him. His

bail bonds are hereby cancelled.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com