

Emperor Vs. Sheo Charan

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SooperKanoon Citation : sooperkanoon.com/455011

Court : Allahabad

Decided On : Mar-22-1923

Reported in : (1923)ILR45All485

Judge : Ryves and ;Daniels, JJ.

Appellant : Emperor

Respondent : Sheo Charan

Judgement :

Ryves and Daniels, JJ.

1. Sheo Charan appeals from his conviction under Section 412 of the Indian Penal Code. The facts found against him are as follows:

On the 14th of April, 1922, a Sub-Inspector of Police had occasion to search his house with reference to another criminal charge. His suspicions were aroused by the condition of a small platform behind an oven in the kitchen and he dug up the place. He unearthed a bundle in which were a number of ornaments, some broken up and some intact. It was subsequently ascertained that one of these articles, on which this charge is based, was stolen in a dacoity which took place at the house of Musammat Dhanpatia in the village of Marwatia, on the 30th of December, 1921. There is further evidence that this dacoity in Marwatia was committed by the same gang that committed another dacoity, at about the same time, in the village

of Ganwaria, and it has been satisfactorily proved that some of the ornaments found in the same bundle were taken in that dacoity. Sheo Charan had already been put on his trial and convicted under Section 412 of the Indian Penal Code in connection with the articles stolen at the Ganwaria dacoity and was sentenced to five years' rigorous imprisonment.

2. He has now been put on his trial for being in dishonest possession of this particular ornament knowing or having reason to believe that it was stolen in a dacoity. In our opinion Sheo Charan cannot, on the evidence adduced in this case, be convicted separately with regard to this particular ornament. There is no evidence that it was received by him on a different occasion to the ornaments which were stolen in the Ganwaria dacoity. Both the ornaments were found in the same bundle hidden at the same place. The case of *Queen-Empress v. Malthan* (1893) I.L.R. 15 All 317 which followed an earlier Calcutta decision, *Ishan Muchi v. The Queen-Empress* (1888) I.L.R. 15 Calc 511 is authority for the proposition that a person found in possession of stolen property identified as belonging to different owners cannot be convicted separately in respect of property identified by each owner, unless there is evidence to prove that they were received by him at different times.

3. We have been asked by the learned Assistant Government Advocate to dissent from this case, but we are not prepared to do so. It has stood unchallenged for nearly thirty years and has been treated as laying down the law by which the courts should be guided. On principle, also, we consider that the ruling is correct. The essence of an offence under Section 411 or 412 is the act of receiving or retaining stolen property. If a thief hands over to the accused a bundle containing a number of articles, the offence committed by the accused in receiving those articles is a single offence and not a number of offences, and it makes no difference whether the articles belonged to a single owner or to different owners. If there were evidence that the accused received the articles at different times or from different persons, the case would be different, but the court cannot presume this against the accused in the absence of any evidence.