

Emperor Vs. Budh Lal

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Court : Allahabad

Decided On : May-29-1907

Reported in : (1907)ILR29All598

Judge : Dillon, J.

Appellant : Emperor

Respondent : Budh Lal

Judgement :

Dillon, J.

1. This is an application for revision of an order of a Deputy Magistrate of Jalaun convicting the petitioner, one Budh Lal, under Section 411 of the Indian Penal Code and sentencing him to 18 months' rigorous imprisonment and a fine of Rs. 500. The facts out of which this conviction has arisen are briefly these: Three bales of cotton cloth had been consigned by a firm in Cawnpore to a shopkeeper at Jalaun, of which only two arrived at their destination. Goods consigned to Jalaun are conveyed on bullock carts starting from the railway station at Orai, and the case for the prosecution is that the missing bale was stolen while in transit from Orai to Jalaun on some date between the 14th and 29th December last. Acting upon information received the Police Sub-Inspector made a search in the house at Jalaun occupied by the petitioner, his father and his son. While proceeding with the search the Sub-Inspector asked to be allowed to go into a

room, which was locked, and which had not been entered. He was informed that that room contained only some wood and grain, etc. Thereupon the Sub-Inspector demanded the key, and was told that it could not be found. Upon the Sub-Inspector's saying that he would have to break open the door with the assistance of a blacksmith, the key was brought by Budh Lal, petitioner. When the door was opened the greater part of the contents of the missing bale, namely, some 97 pieces of cloth, about Rs. 285 in value, were found. Budh Lal and his father and his son were put upon their trial before the Magistrate, with the result that only Budh Lal was convicted. The only defence put forward in the Court below was that the goods had been placed where they were found in order to get the accused into trouble; but this defence is negatived by the fact that the room in which the property was discovered was built of masonry and was locked and intact. The only argument which has been addressed to me in revision is that the mere fact that the petitioner was the managing member of the family ought not to have led the Courts below to the conclusion at which they have arrived. I should have been quite prepared to accept this contention if that were the only ground upon which this conviction was based. But the other facts of the case, namely, the size of the missing bale, its weight, 5 maunds, the fact that it could not have been got into the house surreptitiously, that the room in which it was found was locked, and that the key was produced by the petitioner, were also taken into consideration, and it is upon them, as well as on the fact that the petitioner is the managing member of the family that the conviction is based. The question whether a person accused of an offence under Section 411 of the Indian Penal Code had guilty knowledge is a question of fact, and in this case it has been held to be proved that the petitioner, Budh Lal, had such knowledge. The finding by the Magistrate on this point is clear and unmistakable. That of the lower appellate Court, though not quite so clear, is, as I understand it, to the same effect. I may say that had I been trying this case as an appeal I should have arrived at the same conclusion Knowledge of the presence in the house of the stolen property having been established against Budh Lal, he must, as the house-master, be presumed to have been in possession of it. *Queen-Empress v. Sangam Lal* (1893) I.L.R., 15 All., 129 at p. 131 is an authority for this proposition.

2. The learned Counsel for the petitioner has addressed me on the question of sentence. This is no doubt a very serious offence, and it is aggravated by the fact that Budh Lal is in affluent circumstances, and apparently doing a good business, but I take into consideration the fact that a sentence of imprisonment will mean a great deal more to a man in his position than to the ordinary criminal. Under the circumstances I think a sentence of one year would meet the ends of justice. I accordingly alter the sentence from one of 18 months to one of one year's rigorous imprisonment. The conviction stands. Subject to this modification the appeal is dismissed.

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