

Babu Ram Vs. Emperor

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Court : Allahabad

Decided On : Aug-14-1937

Reported in : AIR1937All754

Appellant : Babu Ram

Respondent : Emperor

Judgement :

ORDER

Allsop, J.

1. The learned Additional Sessions Judge of Aligarh at Etah has made a recommendation that a sentence of Bs. 20 fine passed on Babu Earn for committing an offence under Section 411 or Section 403, I.P.C., should be set aside. The learned Magistrate who tried the case found that a buffalo had strayed from the house of its owner as alleged by him and that it was found several months afterwards in the house of Babu Ram. Suspicion was directed towards Babu Ram's brother who lives with him, but the brother maintained that Babu Ram had brought the buffalo to the house and that fact has now been accepted and is not denied by Babu Ram himself. Babu Ram's explanation was that he had bought the buffalo in good faith from a man called Jagannath. In support of this allegation he produced what purported to be a receipt or acknowledgment of the fact executed by Jagannath. This receipt was written by Wazir Khan, a Municipal clerk and upon

it there was a thumb impression which was alleged to be that of the vendor.

2. The learned Magistrate for several reasons came to the conclusion that this receipt was quite valueless as a piece of evidence. It was undated. It was not produced until 20 days after the buffalo was recovered from Babu Ram's house. It was denied by Jagannath and neither Babu Ram nor Wazir Khan could identify Jagannath when he was paraded before them in, jail with a number of other people. The learned Magistrate came to the conclusion that Babu Ram's explanation of the fact that he was in possession of the buffalo was unsatisfactory and from this he inferred that Babu Ram's possession was dishonest. There was a further fact that Babu Ram had absconded after his brother had been acquitted.

3. The learned Judge has suggested several reasons why the conviction should not stand. The first of these is that the learned Magistrate has not definitely decided whether the accused was guilty of an offence of receiving stolen property under Section 411, I.P.C., or an offence of criminal misappropriation punishable under Section 403, I.P.C. The learned Judge says that there may be an alternative charge but there cannot be an alternative conviction. I do not think, that the learned Judge is right in this statement. If the Magistrate is not able to, find for certain that facts exist which justify conviction, he should of course acquit, the accused, but where the Magistrate has found that facts do exist which establish that the accused person must have committed some offence, although it is doubtful exactly what that offence was, a conviction for the least serious offence is in my opinion perfectly good. The most that can be said is that there cannot be an alternative conviction or for that matter an alternative charge where the facts are doubtful but only where the deductions from the facts are doubtful. The facts in; this case are that the buffalo disappeared from the possession of its owner, that it was found in the possession of the accused and that the accused was unable to explain satisfactorily how it came honestly into his possession. From these facts, the deduction may be either that the accused misappropriated the animal himself or that he received it dishonestly from some other person who had misappropriated it. The accused was certainly not entitled to escape punishment merely because nobody could prove whether he misappropriated the animal himself or got it from somebody else who had misappropriated it in the first instance.

4. The second point arises out of the evidence of Wazir Khan. He was produced as a witness by the prosecution. The learned Judge says that he has deposed that Jagannath sold the buffalo and executed the receipt, and the prosecution as they produced him are bound by his evidence. He says that the prosecution made no application to the Magistrate to the effect that the witness was hostile. I do not know upon what section of the Evidence Act or upon what other law the learned Judge bases his general proposition that a party is bound by the evidence of a witness whom he produces. No part of the statement of such a witness amounts as far as I know to an admission on behalf of the party producing him. In some circumstances a Court which is deciding a question of fact may say that a party produces a witness presumably because he believes that he is a witness of truth and, therefore, if the witness says something contrary to the interest of the party producing him, the statement must be regarded as having considerable weight. I do not think that it is possible to go further than that. Nor do I know of any rule of law that a party is not able to say that a witness produced by him is not speaking the truth upon some particular point unless he makes a written application to say that the witness is hostile. The provision of the Evidence Act allows a party with the consent of the Court to cross-examine his own witness. I may mention that this Court has more than once complained that public prosecutors have not produced witnesses who alleged they had knowledge of the facts or who might have been supposed for some reason possibly to have knowledge of the facts.

5. If it were argued that the prosecution were bound by the evidence of these witnesses, their position would be impossible. In the first place it would be urged that they had not done their duty because they had failed to produce the witness even though they did not believe that the witness was speaking the truth and on the other hand, if they did produce the witness, it would be urged that they would be bound by the witness' statement. In this case presumably as the receipt was in existence and purported to have been drawn up by Wazir Khan, the prosecution felt that it was only fair that they should produce Wazir Khan before the Magistrate who might then be in a position to say whether he was or was not speaking the truth. It by no means follows that they themselves relied upon his evidence in any particular whatsoever, much less that it must be inferred because the prosecution produced the witness that he must have been speaking the truth and that the

accused person was not guilty of the offence with which he was charged.

6. The third point is that the receipt does bear a thumb impression and that the prosecution should have ascertained from an expert whether the thumb impression could be identified with the thumb impression of Jagannath. That is a point which should have been raised before the Magistrate. It may well be that the thumb impression is so blurred that no expert could have formed any opinion about its identity with the thumb impression of Jagannath or anybody else. Without going into questions of that nature it is impossible to say that the conviction of the accused person is obviously wrong. There is certainly no ground whatsoever for interference in revision. I reject the application and direct that the papers be returned to the lower Court.

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