

Narendra Kumar Vs. State

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Court : Allahabad

Decided On : Sep-05-1955

Reported in : AIR1956All336; 1956CriLJ662

Judge : Asthana, J.

Acts : [Indian Penal Code , 1860](#) - Sections 395 and 412

Appeal No. : Criminal Appeal No. 525 of 1952

Appellant : Narendra Kumar

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : P.N. Shukla and ;L. Chandra, Adv.

Judgement :

FACTS: Narendra Kumar, Basdeo, Ram Autar, Ram Prasad and Lala were convicted under Section 395, Penal Code by the Additional Sessions Judge of Kanpur and were sentenced to 5 years' rigorous imprisonment and a fine of Rs. 200/-. Ram Prasad and Ram Autar were also convicted under Section 412, I.P.C. and were sentenced to 2 years' rigorous imprisonment. The sentences under Sections 395 and 412, I.P.C. were concurrent. All of them preferred appeals to the High Court.

It appeared that the appellants along with four other persons, namely, Mathura Singh, Rup Narain Ram Pal alias Kallu and Ram Dularey, were charged under Section 395, I.P.C. for committing a dacoity at the house of one Ram Prasad on the night between the 15th and the 16th April, 1951 in Village Maryani, P.S. Bithore, district Kanpur. Two of them, namely Ram Autar and Ram Prasad, were also charged under Section 412, I.P.C. because some of the looted property was alleged to have been recovered from their possession.

The charge under Section 395, I.P.C. was tried with the aid of assessors the charge under Section 412, I.P.C. was tried with the aid of a jury, but the same persons who acted as assessors worked as jurors. The jury found Ram Autar & Ram Prasad guilty under Section 412, I.P.C. and the Sessions Judge accepted the verdict and convicted both of them under Section 412, I.P.C.

As regards the charge under Section 395, I.P.C. he was of the opinion that the offence of dacoity under Section 395, I.P.C. had not been proved against four of the accused persons, namely. Mathura Singh, Ram Pal alias Kallu, Ram Dularey and Rup Narain. He, therefore, acquitted them. He however, found the remaining five accused, namely, Narendra Kumar, Ram Autar, Basdeo, Ram Prasad and Lala, guilty under Section 395, I.P.C. and convicted and sentenced them as has already been mentioned above.

Asthana, J.

1. (After stating the facts as above, his Lordship discussed the evidence on record and came to the conclusion that as the offences were not satisfactorily proved against the accused they were entitled to acquittal.) Before parting with this case I would like to point out that the conviction of Ram Prasad and Ram Autar under both the Sections 395 and 412, I. P. C. was not proper. If they had taken part in the dacoity then it would be natural that some of the looted property would be found in their possession.

In my opinion where a person is not guilty under Section 395, I. P. C. for committing a dacoity but where the looted property is found in his possession, and he has knowledge that it is looted property he can be held guilty under Section

412, I. P. C. but where he is convicted under Section 395, I. P. C. for committing a dacoity and it was in the course of that dacoity that the property which was found in his possession came to him, he cannot be held guilty both under Sections 395 and 412, I. P. C.

In this connection reference may be made to 1950 AC 32 (A). It was held in this case that considering the language of Section 411, I. P. O. it was clear that dishonest retention was contradistinguishable with dishonest reception. In the former offence dishonesty supervened after the act of possession, while in the latter dishonesty is contemporaneous with the act of acquisition.

The act of dishonest removal within the meaning of Section 379 of the Code constitutes dishonest reception under Section 411, and that being so the thief does not commit the offence of retaining stolen property merely by continuing to be in possession of the property which was stolen by him. Where a thief has already been convicted and sentenced under Section 392, I. P. C. he could not be given a separate punishment under Section 411, I. P. C.

2. The result is that these appeals are allowed and the conviction and sentence of the appellants are set aside. The appellants are in jail. They shall be set at liberty forthwith unless required in connection with any other matter.

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