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Court : Allahabad

Decided On : Jan-25-1945

Reported in : AIR1945All230

Appellant : Maharaj Singh

Respondent : Emperor

Judgement :
ORDER

Wali Ullah, J.

1. This is an application in revision by Maharaj Singh against the order of the learned Sessions Judge confirming the conviction of the applicant under Section 411, Penal Code, and upholding the sentence of two years' rigorous imprisonment passed on him by a learned Magistrate of the First Class. It appears that a burglary was committed at the house of one Vireshwarpal Singh at village Cadola on the night between 27th and 28th August 1943 and some valuable ornaments and cash to the extent of about Rs. 4000 were removed by the burglars from a locked safe inside a Kothri in the inner apartments of the house of Vireshwarpal Singh. Vireshwarpal Singh and his family lived in another house. The next morning at about 10 A. M. the burglary was discovered when Vireshwar. pal Singh went to the other house where the iron safe and other property was kept. On coming to know of the theft he immediately wrote out a first information report and sent it to

the police station Hasain. A report was recorded at the police station at about 12 noon on 28th August 1943. The station officer, Har Narain Singh, happened to be at the headquarters at the time and on getting information about it he went to the than a and thence proceeded to village Cadola to hold investigation. It may be mentioned here that Vireshwarpal Singh, the complainant, expressed his suspicion against several persons including the applicant in the first information report. The station officer arrived in the village at about 4 p. M., and shortly afterwards he searched the houses of three persons, namely Budhna, Debi Singh and Maharaj Singh and made the recovery of various articles. A velvet batua, (Ex. 4), a gold bangle studded with stones (Ex. l), currency notes of the value of Rs. 200, (ex. 13) and cash (Ex. 14) amounting to Rs. 109 were recovered from the house of the applicant.

2. As a result of police investigation, four persons were sent up to stand their trial for an offence under Section 457, Penal Code. Budhna and Debi Singh, who had apparently confessed, were convicted under,s. 457, Penal Code, and each sentenced to 18 months' rigorous imprisonment. Maharaj Singh, the applicant, and his brother, Bhum Jit Singh (who also stood his trial along with Maharaj Singh) were convicted under Section 411, Penal Code. Maharaj Singh was sentenced to two years' rigorous imprisonment while Bhum Jit Singh, who was a young boy of 16 or 17 years of age, was dealt with under the First Offenders Act. On appeal to the learned Sessions Judge, Bhum Jit Singh was acquitted and the conviction and sentence of Maharaj Singh were affirmed. On a consideration of the entire evidence and the circumstances of the case, the learned Sessions Judge found that the prosecution bad satisfactorily established that the batua (Ex. 4), gold bangle (Ex. l) and the currency notes and cash were actually recovered from the kotha of Maharaj Singh and his brother Bhum Jit Singh. The question, however, arises whether on the facts found by the learned Judge, namely that the applicant Maharaj Singh and his younger brother, Bhum Jit Singh, jointly occupied the kotha in question, the applicant can be said to have been in actual possession of the stolen property found in the kotha.

3. On a consideration of all the circumstances of the case and in the light of the rulings cited before him the learned Sessions Judge recorded a clear finding that it

was fully established that the stolen articles were recovered from the possession of Maharaj Singh who had also the guilty knowledge but the case of Bhum Jit Singh was not free from doubt. In view of this finding, as mentioned above, he allowed the appeal of Bhum Jit Singh and acquitted him.

4. I have heard learned Counsel for the applicant at great length and also the learned Deputy Government Advocate on behalf of the Crown. Various rulings have been cited before me both of this Court as well as of other High Courts in India. I have carefully perused all of them as well as the materials on the record. It seems to me, however, that there is no real divergence of judicial opinion with regard to the law applicable to the facts of a case like the present. It is settled law that the prosecution must establish not only that the stolen property was recovered from the house, or other place, in the occupation of the culprit but also that the incriminating article was in the house or other place and the culprit was fully aware of its presence there. Reference might be made to some recent cases of this Court: Tulai Ram v. Emperor : AIR1936 All650 , Habib v. Emperor : AIR1936 All386 , Abdul Rabman v. Emperor : AIR1940 All449 , Ram Charan v. Emperor ('33) 20 A.I.R. 1933 All. 437 and Jwala v. Emperor : AIR1934 All548 . As observed by their Lordships in Jwala v. Emperor : AIR1934 All548 every case must be decided on its own facts and it is not desirable to lay down any general propositions of law. In the present case, bearing in mind the principles laid down in the above mentioned cases, it seems to me that the inferences drawn by the learned Sessions Judge with regard to the criminal knowledge of the applicant about the presence of the stolen articles inside the kotha are fully borne out by the materials on the record. In the first place the applicant was present at the time when the police searched his house and made recoveries. It must be remembered that the theft had taken place on the night of 27th August and the recoveries were made some time on the evening of 28th August 1943. The house burgled as well as the house of the applicant from which the recoveries were made are situate in the same village and more or less in close proximity. It is in evidence that the applicant Maharaj Singh who happens to be some sort of a relation of Vireshwarpal Singh was sleeping on a cot somewhere near the place where the complainant slept that night but at about 4 o'clock that night when the complainant woke up he found the applicant missing from his bed. This by itself does not throw

much light upon the criminal nature of the conduct of the applicant but it is an element to be taken into consideration along with other circumstances of the case. Further, it is clear that the statement of the applicant in the course of the trial has all along been that no recoveries were made from his house and that a false case was started against him by the police at the instance of his enemies. In the light of the evidence in the case, both the Courts below concurred in finding this plea of the applicant to be a false one. Far from giving any explanation about the presence of the incriminating articles inside the kotha of the applicant, he deliberately and falsely denied the factum of recovery of the articles from his kotha. This conduct on the part of the applicant is anything but that of an honest person. The interval of time between the commission of the burglary on the night of 27th August 1943, and the recoveries of the articles made from the Kotha of the applicant on the evening of the 28th is so short that any explanation other than that suggested by the prosecution about the presence of the articles inside the kotha of the applicant is hardly conceivable. Lastly, it appears that the applicant is the elder of the two brothers who occupied the Kotha in question and he has been described by the learned Sessions Judge as the manager of the joint family. It is also in the evidence of the complainant that prior to the burglary the applicant Maharaj Singh had been inside the house of the complainant and has seen the iron safe and had also knowledge of the fact that valuables were kept there. Considering all these circumstances) it seems to me that the Courts below were fully justified in arriving at the conclusion that the applicant Maharaj Singh was not only in occupation of the kotha from which the recoveries were made but that he had also knowledge that the things were there. As the learned Magistrate has observed in the course of his judgment, it is just possible that the applicant Maharaj Singh may have been responsible for giving the clue to the burglars about the presence of valuables in the locked safe of the complainant and may have obtained his share of the stolen property as a reward for his services.

5. I have given my anxious consideration to the facts found and the circumstances of the case and I agree with the Courts below that the charge is fully brought home to the applicant. I accordingly confirm the conviction of the applicant under Section 411, Penal Code. As regards the sentence, it seems to me that there is no good reason for differentiating between; the cases of Debi Singh and Budhna Chamar

on the one side and the case of the applicant on the other. Furthermore, the applicant is a young man of about 20 years of age. In view of these circumstances, in my judgment, the ends of justice will be met by reducing the sentence from two years' rigorous imprisonment to 18 months' rigorous imprisonment. In other respects the application is dismissed. The applicant is on bail. He must surrender and serve out the rest of his sentence.

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