SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Nabi HusaIn Vs. State

Nabi HusaIn Vs. State

SooperKanoon Citation : sooperkanoon.com/460723

Court : Allahabad

Decided On : Jul-29-1966

Reported in : AIR1967All445; 1967CriLJ1129

Judge : D.P. Uniyal, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 239 and 537

Appeal No. : Criminal Revn. No. 2109 of 1964

Appellant : Nabi Husain

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Ramo Devi Gupta and ;Ram Ballabh Ararwal, Advs.

Disposition : Petitions allowed

Judgement :
ORDER

D.P. Uniyal, J.

1. These two criminal revisions, one by Nabi Hussain and the other by Khalil, arise out of the same trial and may be disposed of by a common judgment.

2. The two applicants have been convicted under Section 411 I. P. C. and each of them sentenced to one year's rigorous imprisonment.

3. The prosecution case, in short, was as follows: On the night between the 9th and 10th January 1964, a theft was committed in the house of one Mohammad Husain in village Amberpur, Police Station Bilaspur. Another theft was committed in the shop of one Shyam Lal in the town of Bilaspur on the night between the 19th and 20th April 1964. As a result of the investigation by the police some stolen property belonging to the first theft was recovered from the house of the applicant Nabi Husain on 13th January 1964. In the course of the second search made on 5th May 1964, stolen property in respect of the two thefts was said to have been recovered on the pointing of Khalil accused from a heap or straw lying near his house. The two applicants were prosecuted at one trial in respect of stolen property transferred in the course of the two thefts and were eventually convicted as said above.

4. Learned counsel for the applicants raised a legal plea that the joint trial of the accused in respect of two separate offences was illegal and their convictions and sentences went liable to be set aside. The learned counsel submitted that the general rule as provided in Section 233 Cr. P. C. was that there should be separate trial for every distinct offence and that a joint trial is an exception. The property said to have been recovered on two different occasions on the pointing of the accused had been secured by means of the commission of two separate offences of theft and could not, therefore, be tried jointly. According to the prosecution, the stolen property alleged to have been recovered on the pointing of Nabi Hussin was the subject matter of the first theft, while the stolen property said to have been recovered on the pointing of Khalil was the subject matter of two independent thefts committed at two different places and on two different occasions. Thus there was no connection between the two thefts so as to justify a joint trial of the accused.

5. Reference was made to the provisions of Section 239 (f) Cr. P. C. which reads as follows:

'Persons accused of offences under Sections 411 and 414 I. P. C. or either of these sections, in respect of stolen property, the possession of which has been transferred by one offence may be charged and tried together.'

5a. 'stolen property' is defined by Section 410 I. P. C and means:

'Property, the possession whereof has been transferred by theft or by extortion or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed.'

6. Reading the two sections together it would appear that if more than one offence of theft has been committed in respect of certain property which could be designated as stolen property, then the persons in possession of such stolen property obtained by means of the commission of several offences of theft, etc. cannot be tried jointly: Bhaggan v. Emperor, AIR 1935 Oudh 327.

7. The illegality arising out of the joint trial of the accused is not curable by Section 537 Cr. P. C. inasmuch as it constitutes violation of the express provisions of Section 239 of the Code and vitiates the whole trial. In Subramanya Aiyar v. King Emperor, (1902) ILR 25 Mad 61 it was held by the Judicial Committee of the Privy Council that the disregard of express provisions of law as to the mode of trial was not a mere irregularity such as could be remedied by Section 537 Cr. P. C.

8. It, therefore, follows that the joint trial of the accused in respect of stolen property the possession of which had been transferred by two separate offences of theft was illegal and is liable to be set aside.

9. I accordingly allow these revisions, set aside the convictions and sentences of the applicants and direct that the accused shall be tried separately for the offence under Section 411 I.P.C.

10. The record of the case shall be sentdown to the Court below with a direction thateach of the two accused shall be tried separately for the offence of receiving or retainingstolen property.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com