Emperor Vs. Anwar

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SooperKanoon Citation : sooperkanoon.com/460772

Court : Allahabad

Decided On : Dec-22-1921

Reported in : (1922)ILR44All276

Judge : Stuart, J.

Appellant : Emperor

Respondent : Anwar

Judgement :

Stuart, J.

1. The facts are as follows. A bicycle was stolen from the precincts of the Allahabad Post Office. Another bicycle was stolen from the precincts of the Allahabad Bank. Parts of both stolen bicycles were found in the house of a man called Narbada Prasad. Parts of both stolen bicycles were found in the shop of a bicycle dealer called Ram Saran. Evidence was given to the effect that Anwar, an employee of Ram Saran in his bicycle shop, had been seen loitering both at the Post Office and at the Allahabad Bank just before the bicycles disappeared., All three men were charged before a Magistrate of the first class under Section 411 of the Indian Penal Code, Anwar being charged in the alternative under Section 379 of the Indian Penal Code. The magistrate convicted Narbada Prasad and Ram Saran under Section 411 of the Indian Penal Code and Anwar under Section 379 of the Indian Penal Code. Narbada did not appeal. Ram Saran appealed, and was

acquitted on the merits. Anwar appealed, but his appeal was dismissed. He comes here in revision. The first point taken by his learned Counsel is that the joint trial of Narbada, Ram Saran and Anwar was bad in law under the provisions of Sections 234 and 239 of the Code of Criminal Procedure. How does the case stand against the three? The case for the prosecution was that Anwar had stolen both bicycles and that Ram Saran was in dishonest possession of parts of both bicycles and that Narbada Prasad was also in dishonest possession of parts of both bicycles, each knowing that these parts were stolen property. According to the view taken in the case of Emperor v. Balabhai Hargovind (1904) 6 Bom. L.R. 517 the theft of the two bicycles and the dishonest possession of them knowing them to be stolen, that possession being by different persons, formed one transaction, even though the receipt was not simultaneous with the theft. I agree with the view taken in that decision. I do not find that there is anything in my view contrary to the view expressed by Lindsay, J., in the case of Jiwan v. Emperor (1921) 19 A.L.J. 815, for there, the actual thief not being charged in the case, there was nothing to connect the three persons. Here it is the fact that Anwar, the actual thief, was charged with the receivers, which justifies the several acts being considered parts of one transaction. On the merits Anwar was clearly proved to have been loitering just before the theft of the bicycles. When the owners returned, the bicycles had disappeared, and Anwar had disappeared. Portions of the stolen bicycles were found in the shop in which he is employed. This being the case I do not see my Way to interfere on the merits. I therefore dismiss this application.