

Sumer Vs. Rex

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Court : Allahabad

Decided On : Dec-14-1949

Reported in : AIR1950All398

Judge : Raghubar Dayal, J.

Acts : [Evidence Act, 1872](#) - Sections 114; [Indian Penal Code \(IPC\), 1860](#) - Sections 412

Appeal No. : Criminal Revn. No. 1191 of 1949

Appellant : Sumer

Respondent : Rex

Advocate for Pet/Ap. : Assistant Government Adv.

Disposition : Revision allowed

Judgement :

ORDER

Raghubar Dayal, J.

1. Sumer was convicted by the Temporary Sessions Judge of Hamirpur at Orai of the offence under Section 412, Penal Code, and was sentenced to six years' rigorous imprisonment.

2. A dacoity was committed at the house of Mahant Bhagwan Das of Banphara, police station Kotwali, Orai, in April 1916, and the dacoits had taken away gun No. 992 S. B. M. L. This gun was recovered from the possession of Sumer on 13th September 1946.

3. Then is no reason to dispute the finding of fact that the gun which was stolen by the dacoits was recovered from the possession of Sumer. I am, however, of opinion that the offence made out against the accused was under Section 411, Penal Code, and not under Section 412, Penal Code.

4. Section 412, Penal Code, is:

'Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity or dishonestly receives from a person, whom he knows or has reason to believe to belong or have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.'

5. There is nothing on the record to show that the applicant knew or had reason to believe that the possession of the gun had been transferred by the commission of dacoity. There is also no evidence on the record to indicate that the applicant received this gun from a person whom he knew or had reason to believe to belong or to have belonged to a gang of dacoits. The learned Sessions Judge has presumed that the applicant was either a dacoit or had received the gun knowing it to be property lost in a dacoity. He raised this presumption in view of Section 114, illustration (a), Evidence Act, and relied on the cases of *Moktarali v. Emperor* : AIR1945 Cal421 and *In re Dhyani Gope*, 48 Cr. L. J. 133: (A. I. R. (34) 1947 Pat. 205). I am of opinion that he could not have presumed this merely on account of the accused's being found in possession of property stolen in a dacoity. It is not necessary that a gun must be stolen in a dacoity. It can be stolen otherwise. In fact, the gun could be' stolen property not only when it had been stolen by theft, but also when it had been obtained by extortion or by robbery or by criminal misappropriation or by the commission of criminal breach of trust. Under Section

114, Evidence Act, the Court is free to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (a) to this section speaks of the presumption about a person being either a thief or receiver of goods knowing them to be stolen, unless he can account for the possession of the stolen goods soon after their theft. The Illustration does not limit the scope of the section and it is possible to raise a presumption in certain circumstances that a person found in possession of property stolen in a dacoity was either a dacoit or had received the property knowing it to have been stolen in a dacoity. I need not state what those circumstances can be. Such a presumption, however, cannot be raised merely on account of a person being in possession of property stolen in a dacoity. Support for this view is found in *Chavadappa Pujari v. Emperor A. I. R. (32) 1945 Bom. 292: (47 Cr. L. J. 51)*.

6. In the case of *Moktarali v. Emperor, 47 Cr. L. J. 193: (A I. r. (32) 1948 Cal. 421)*, Jogesh Chandra Chakladar was convicted of an offence under Section 412, Penal Code, by the trial Court. His conviction was altered to one under Section 411, Penal Code. The learned Judges, while discussing the contention that the only presumption that could be made under Section 114, Evidence Act, was that the accused was either a thief or received or retained the goods knowing or having reason to believe them to be stolen, observed :

Section 114, Evidence Act, is general in its terms. Illustration (a) is only an illustration, and the fact that the section does not provide an illustration with reference to a dacoity does not mean that there is no such presumption. The Judge was perfectly entitled to tell the jury that they might presume either that the accused was one of the dacoits or that he had dishonestly received or retained the pitcher knowing or having reason to believe that the possession had been transferred by dacoity or that he had dishonestly received or retained it knowing or having reason to believe that it was stolen property. In the present case the latter choice, it is true, was not offered to the jury for their consideration and to that extent we consider that the charge is defective.

In this view of the matter, we think that it would be proper to alter the conviction of Jogesh Chandra Chakladar to one under Section 411, Penal Code, as we consider that in his case had the correct direction been given, it is possible that the jury might have delivered the verdict under that section.'

This case did not hold that the mere recovery of property stolen in a dacoity from the possession of a person must raise the presumption that he was either a dacoit or had received the property knowing it to have been stolen in a dacoity. It simply held that such a presumption could be raised as well as the other presumption that he had received the property knowing it to be just stolen property and not knowing that it was stolen in a dacoity. It may be mentioned here that in this case Jogesh Chandra Chakladar was charged under Section 395, Penal Code and had been identified by a witness whose identification was not accepted.

7. In Dhyani Gope's case, 48 Cr. L. J. 133 : (A. I. R. (34) 1947 oudh 205), a number of things stolen in a dacoity committed on the night between 27th and 28th March 1944 were recovered from the possession of the accused on 6th April. They were identified to be stolen property. It was observed at p. 136 :

'The essence of the presumption, in my view, is that when the essential facts relating to the ownership, theft and possession of the articles have been established, the Court may infer that the accused knew how they have been removed from the possession of the owner. Illustration (a) to Section 114 of course, only mentions a case of ordinary theft, but it is well established that its principle applies, not only to cases of ordinary theft, but to cognate offences such as dacoity and robbery. The position, therefore, in my opinion, is that when the necessary facts have been established from which the presumption may be drawn, the presumption that should be drawn is that the accused knew of the manner in which the articles in question had been taken away from the possession of the owner that is to say, in a case of ordinary theft that they had been stolen, and in a case of dacoity that they had been stolen in the course of a dacoity.'

With respect, I do not agree with this view. Illustration (a) to Section 114 is :

'That a man who is in possession of stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.'

It does not say that the Court may presume that he received the goods knowing them to be obtained by theft. It is easy and possible for one to know or to have reason to believe that the property he was receiving could not have been honestly received by the transferor and would have been received by him in either of the modes mentioned in Section 410, Penal Code. It is not easy for a person to know or to have reason to believe the exact manner in which that property could have come in the possession of the transferor or could have been lost to the rightful owner or possessor of the article. There should be evidence of facts or circumstances or both from which it can be concluded that the accused could have known or could have reason to believe that the stolen property was lost to the rightful owner or possessor in the alleged manner. It cannot be said from the mere fact that the accused was in possession of stolen property that he must have known or must have had reason to believe that the property was stolen in a dacoity.

8. I am, therefore, of opinion that Sumer should be convicted under Section 411 instead of Section 412, Penal Code. I, therefore, allow this revision and alter the conviction of Sumer from one under Section 412 to one under Section 411, Penal Code and reduce the sentence to one year's rigorous imprisonment.

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