

Emperor Vs. Zahir Nat

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Court : Allahabad

Decided On : Nov-21-1933

Reported in : AIR1934All455

Appellant : Emperor

Respondent : Zahir Nat

Judgement :

ORDER

Niamatullah, J.

1. This is a criminal reference by the learned Sessions Judge, Mirzapore, who does not make any specific recommendation, but his order implies that in his opinion commitment of the accused Zahir Nat should be quashed. The accused was prosecuted on a charge under Section 379/75 or, in the alternative Section 411/75, Penal Code. The case for the prosecution is that certain cattle belonging to one Bansidhar resident of village Tilauti, in the Mirzapur District, were stolen on 4th April 1933, and were found in the possession of the accused the next day at a place within the limits of the Benares State. The accused is alleged to have been previously convicted of offences which justified his conviction under Section 75, Penal Code, if the present charge of theft or being in possession of the stolen property is made out. The learned Magistrate charged him, in the alternative, for an offence under Sections 379/75, Penal Code, or Sections 411/75, Penal Code,

which made the case triable by a Court of Session. Accordingly he committed the accused to take his trial before the Sessions Judge of Mirzapur. Before recording any evidence in the case the learned Sessions Judge expunged the charge under Section 379, Penal Code, on the ground that there was no evidence which directly proved that the accused had stolen the cattle in question. As regards his possession or retention of the stolen property within the limits of the Benares State, the learned Judge expressed the opinion that the accused was not triable in Mirzapur, having regard to the provisions of Section 188, Criminal P.C. which required the sanction of the Political Agent (who is in this case the Commissioner of Benares) for the trial of a native Indian subject of His Majesty committing an offence within the territories of an Indian Prince or Chief. It is not disputed that no sanction of the Commissioner of Benares was obtained for the prosecution of Zahir Nat.

2. In my opinion the learned Sessions Judge proceeded on an erroneous view of law on both the points, to which reference has been made. 'Where a person is found in possession of stolen property shortly after it was stolen, the Court may presume that he is the thief (Section 114, Illus. (a), Evidence Act), The presumption however is not to be made invariably. The circumstances of each case have to be considered for arriving at the conclusion as to whether the person found in possession of stolen property soon after the theft should or should not be considered to be the thief. The mere fact that there was no direct evidence establishing that the accused had stolen the cattle did not necessarily warrant the procedure which the learned Sessions Judge adopted in expunging the charge under Section 379, Penal Code. The fact that Zahir Nat was found to be in possession of the stolen cattle the day after the theft should have been allowed to be proved at the trial and that fact should have been duly considered with other circumstances before the learned Judge could arrive at a conclusion whether the evidence established an offence under Section 379, Penal Code. The learned Judge's pronouncement on that part of the case was premature. In holding that the accused was not triable at Mirzapur for the offence of being in possession of stolen property without the sanction of the Political Agent, the learned Judge has overlooked the provisions of Section 181(3), Criminal P.C. under which a person found to be in possession of stolen property can be tried by a Court within the local

limits of whose jurisdiction the offence of theft was committed or within whose jurisdiction it was possessed by any person who received or retained the same knowing or having reason to believe it to be stolen. The section itself leaves little doubt on this point and the view is further supported by Emperor v. Bhima : AIR1926 All167 . For the reasons stated above, I am unable to accept the reference. Let the record of the case be returned to the learned Sessions Judge, who should dispose of the case according to law.

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