

State Vs. Jhabbu and ors.

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Court : Allahabad

Decided On : May-22-1950

Reported in : AIR1952All445

Judge : Harish Chandra, J.

Acts : [Evidence Act, 1872](#) - Sections 9

Appeal No. : Criminal Appeal No. 331 of 1949

Appellant : State

Respondent : Jhabbu and ors.

Advocate for Def. : Shripeti Sahai Srivastava, Adv. for No. 1 and ;B.C. Saxena, Adv. for Nos. 2 to 7

Advocate for Pet/Ap. : A.G.A.

Judgement :

Harish Chandra, J.

This appellant (SugharSingh) was identified by Arjun, Gopal. RamBharose and Bhopi. Besides this evidence, there is the evidence of the recovery from him of a hansli, Ex. 6 and a tarain, Ex 7, which have been identified by Arjun and his wife as forming part of the stolen property. I have carefully examined these ornaments and

compared them with the descriptions given in the list of stolen property prepared by the complainant, namely, Ex. p.2, and in my view they tally with the descriptions, however, brief they may be, as given in the list. It is, however, pointed out that their alleged identification by the complainant and his wife is open to criticism. The Magistrate before whom the identification was held has stated that he sent for some property of a similar description from the Tahsil and the Naib Nazir of the Tahsil brought a sealed bundle containing similar articles. The articles said to have been recovered from the possession of this appellant were also brought to him in a sealed bundle. Both these sealed bundles were opened in this presence and both the sets of articles were mixed together before they were put up for identification by the witnesses. It is said that the Naib Nazir of the Tahsil should also have been examined to prove that these other articles which were mixed with the suspected articles and not been shown to the witnesses before they were produced before the Magistrate. For had they been so shown, the identification would lose much of its value. But the witnesses are not residents of the place where the identification was held and there is no suggestion in the evidence at all that these articles had in fact been previously shown to the witnesses. In the circumstances my view is that it was quite unnecessary to produce such evidence to prove the negative fact that these other articles had not been shown to the witnesses before the identification proceeding took place. My attention has been drawn to the case of Subhan v. Rex : AIR 1950 All 180 decided by a learned Single Judge of this Court in which objection was taken to the non production in similar circumstances of the person who had produced articles before the Magistrate to be mixed up with certain suspected articles prior to their identification by the witnesses. But that was not the only ground upon which the evidence of identification of property was discarded. There was also the ground that the rumal of orange colour which was said to have been part of the stolen property in that case, had been mixed with only one other rumal of a similar description when it was put up for identification by the witnesses and that, therefore, the evidence of identification could not be regarded as reliable. In my view the evidence of identification of the articles Exs. 6 and 7 by the complainant and his wife in this case cannot be discarded on the mere ground that the Naib Nazir had not been examined with the object of proving that the articles with which the suspected property was mixed had not been shown to

the identifying witnesses before the identification proceeding was held. It is further pointed out that the Magistrate before whom the identification proceeding was held has stated that he did not put any marks on the suspected articles and it is argued that there is nothing, therefore, to show that Exs. 6 and 7 are in fact the articles which had been recovered from the house of Sughar Singh. It is said that there is no guarantee that Exs. 6 and 7 are not part of the property which had been produced by the Naib Nazir to be mixed up with the suspected property. I am not impressed by this argument. No doubt the Magistrate has stated that he put no marks on the suspected articles. But there is nothing in his evidence to indicate that he took no steps whatsoever to keep such articles distinct and the cross-examination of the witness was not pushed further. It may be mentioned that this appellant produced a witness named Raghubar with the object of proving that the ornaments Exs. 6 and 7 belonged to Sughar Singh's mother. This evidence rules out the possibility of Exs. 6 and 7 not being the same articles as were recovered from the possession of Sughar Singh. The evidence of Raghubar alone, however, does not go to the extent of establishing that these ornaments are in fact the property of Sughar Singh's mother. In my view the case against Sughar Singh has been established by cogent and reliable evidence.

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