

Nakali and anr. Vs. State

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Court : Allahabad

Decided On : Dec-06-1977

Reported in : 1978CriLJ379

Judge : V.N. Varma, J.

Appellant : Nakali and anr.

Respondent : State

Judgement :

ORDER

V.N. Varma, J.

1. This revision is directed against an order dated 16-8-73 passed by Additional Sessions Judge Saharanpur confirming the conviction of the applicant Under Section 411 I.P.C., but reducing his sentence from one year R.I. to six months R.I.

2. Balbir Singh P. W. 1 is a resident of village Halwana, P.S. Fateh-pur, district Saharanpur. On or about 1-4-70 Balbir Singh had gone out to meet one of his relations in village Jandhara under P.S. Deoband. While he was away, someone broke open the lock put on the door of his Gher and stole one of his bullocks tied there. He searched for his bullock for days together, but could not trace it. He, therefore, lodged a report on 15-5-70 regarding the theft of his bullock. A case Under Section 457/380 IPC was registered by the police. S.I. Indrapal Singh was

entrusted with the investigation of this case. On 16-5-70 Balbir Singh informed S. I. Indrapal Singh that he had received information that his bullock was with the applicants in village Dhalwali P.S. Gango. S. I. Indrapal Singh went to village Dhalwali, raided the gher of the applicants and recovered a bullock which was said to belong to Balbir Singh. That bullock was seized and was subjected to Khoonta test. It was left at a distance of about three furlongs from the house of Balbir Singh and it went to Balbir Singh's house. After investigation the applicants were sent up to stand their trial Under Section 411, IPC

3. The applicants pleaded not guilty. They admitted the recovery of a bullock by the police from their Gher, but contended that it belonged to them.

4. The learned trial court found that the bullock in question belonged to Balbir Singh. It also found that the applicants had been retaining the bullock knowing it to be stolen property. Accordingly, it convicted the applicants Under Section 411, IPC and sentenced them to one year R.I. each. The applicants went up in appeal to the Court of Session. The Sessions Judge dismissed their appeal, but reduced their sentence from one year R.I. each to six months R.I. each. Aggrieved, they have come up in revision to this Court.

5. Even if one took it for a moment that the bullock in question belonged to Balbir Singh and it was recovered from the possession of the applicants, the question is whether despite that any offence Under Section 411, IPC is made out against the applicants or not. According to the applicants, they could have been convicted of the offence Under Section 411, IPC only when it had been shown that the bullock in question had been in possession of someone else before it came into their possession. And in support of this contention of theirs, they drew my attention to the ruling reported in *Trimbak Prasad v. State of Madhya Pradesh* : AIR 1954 SC39 . In this ruling their Lordships remarked that the following things must be proved before a person could be convicted Under Section 411, IPC

(1) That the stolen property was in the possession of the accused;

(2) that some person other than the accused had possession of the property before the accused got possession of it; and

(3) That the accused had knowledge that the property was stolen property.

6. It was stressed on behalf of the applicants that as the prosecution had failed to prove ' that the bullock in question had been in possession of some other person before they got possession of it and so it cannot be said that the case against them has been fully proved. The observations made by the Supreme Court in *Trimbak Prasad v. State of Madhya Pradesh* (1954 Cri LJ 335 SC)) were interpreted by this Court in the ruling reported in *Rajjaua v. State* : AIR1959 All718 . The Court observed that in every case Under Section 411 I. P. C-two facts have to be established by direct evidence, namely, (1) that a theft was committed and certain articles were stolen and (2) that the stolen articles were recovered from the possession of the accused. The Court further observed that if these two facts are established and the recovery of the articles from the possession of the accused is a recent one, then it would be open to the Court to presume under illustration (a) to Section 114, Evidence Act, that the accused is either a thief or a receiver of a stolen property. Such a presumption was, however, a discretionary one and may not be available at all in certain cases, e.g. where in the circumstances of the case the recovery cannot be held to have been made soon after the theft. In such a case it was remarked that it was necessary for the prosecution to prove by direct evidence not only that the stolen property was in possession of some person other than the accused before it came in his possession but also that the accused knew or had reason to believe that the property was stolen property.

7. From the above, it, therefore, follows that in case the recovery was a recent one, then it was not necessary to prove that some person other than the accused had possession of the property before the accused got possession of it. On the other hand, if the recovery was not a recent one, then it was necessary to prove that some person other than the accused had possession of the property before the accused got possession of it. Therefore, the question that now arises for consideration is whether the recovery in the present case was a recent one or not. No fixed time limit can be laid down to determine whether the recovery of articles is recent or otherwise. Every case has got to be judged on its own facts. In this case the bullock in question was recovered from the possession of the applicants after a lapse of one month 17 days. It was quite a big gap and by no stretch of

imagination one can call the recovery in this case to be a recent recovery. If the recovery was not a recent one, then it was necessary for the prosecution to prove that some person other than the applicants had possession of the disputed bullock before they got possession of it. The change of hands has not been proved by the prosecution in this case. Consequently, in view of Trimbak's case (1954 Cri LJ 335 (SC)) it cannot be said that the case against the applicants Under Section 411, IPC has been fully proved. In any event the case against them is not free from doubt and they must, therefore, be acquitted.

8. In the result, I allow the revision and set aside the conviction and sentences passed against the applicants. They are on bail, their bail bonds are discharged and they need not surrender to them.

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