

Muhammad Ibrahim Vs. Emperor

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Court : Allahabad

Decided On : Dec-13-1915

Reported in : AIR1916All86; 32Ind.Cas.153

Judge : George Knox, J.

Appellant : Muhammad Ibrahim

Respondent : Emperor

Judgement :

George Knox, J.

1. Muhammad Ibrahim, who appears to be some kind of a merchant in metals in the Cawnpore bazar, has been convicted of an offence under Section 411, Indian Penal Code, and sentenced to two years' rigorous imprisonment. The finding of the Magistrate who tried the case is that Muhammad Ibrahim knew or had reason to believe that the material called copper cloth was stolen property. Muhammad Ibrahim was tried along with one Ram Narain who also appears to be a second hand dealer in metals and other such materials in the Cawnpore bazar. The property stolen is described as 8 pieces of very fine copper netting known as copper cloth used for the lining of tube wells. There appears to be no room for doubt that this copper cloth was stolen from the Generalganj Station on the 20th or 21st June of the present year. It had been put in a waggon and brought to the Generalganj Will siding on the 20th of June. On the 21st of Juno it disappeared.

The finding of both the Courts below is that it is stolen property, and I agree with that finding, and I shall not go into that part of the case any further.

2. Ram Narain has been convicted of an offence under Section 411, Indian Penal Code, in connection with this copper cloth. He appealed, his appeal was dismissed and he has not applied to this Court in revision. I also agree with the Courts below that the channel through which Muhammad Ibrahim received the copper cloth was Ram Narain. It was Muhammad Ibrahim who produced the copper cloth and sold it to the Empire Engineering Company for Rs. 112-8-0. The question which is pressed on me in revision is that there is no evidence to show that Muhammad Ibrahim possessed or retained this copper cloth with guilty knowledge such as is essential to a conviction under Section 411, Indian Penal Code. A further point was taken that the joint trial of Muhammad Ibrahim with Ram Narain has prejudiced Muhammad Ibrahim, and that at any rate he should be given an opportunity of being tried separately and apart from Ram Narain. I considered that question. It was I think a mistake on the part of the Magistrate who tried the case to have tried both the accused in one and the same trial. Very little reflection should have led the Joint Magistrate to the conclusion that Muhammad Ibrahim would probably, if not certainly, cite Ram Narain as a witness in his defence, but I do not see sufficient ground for interfering on that matter--the more so as any interference would simply lead to the trial of Muhammad Ibrahim a second time for one and the same offence.

3. I now go back to the question whether there is any evidence of dishonesty on the part of Muhammad Ibrahim. When he was called upon to account for the possession by him of this copper wire he at once said that he had bought it from Ram Narain for Rs. 48. He further said that a certain ghumnewala, apparently the broker Gaya Prasad, had brought a sample of copper cloth and asked him if he would purchase it. Muhammad Ibrahim further said that he offered Re. 1 per seer, the current price according to him being at that time 13 annas or 14 annas per seer, and it was according to this rate that he paid Ram Narain Rs. 48. To this account of the transaction he has throughout practically adhered. He says that he took the copper cloth to be secondhand stuff, and that the only use that he could make of it would be to melt it down. Gaya Prasad was cited as a witness by the

prosecution, and so far as his evidence goes, it supports what Muhammad Ibrahim has said. He says he was present at the final transaction when the copper cloth passed from the hands of Ram Narain into the hands of Muhammad Ibrahim. There is further evidence which cannot be overlooked, namely the evidence of Mr. O'Connor, an employee of the Empire Engineering Company, and there is the evidence of Rahmat Ali who describes himself as a contractor for the Empire Engineering Company and is described by Mr. O'Connor in the same terms. Mr. O'Connor's evidence is valuable so far as it relates to the fact of the copper cloth being stolen property. He also says that this specially manufactured article is manufactured to the order of the Empire Engineering Company. This particular copper cloth should have arrived somewhere in the middle of June. But on the 20th of June as there was urgent need of it, and it had not arrived, he asked Rahmat Ali to see if he could get any such article in the bazar. Three or four days after Rahmat Ali came to Mr. O'Connor and said that a man undertook to get similar netting from Bombay. On the 15th of July Rahmat Ali brought a sample from somebody and was told to get more of it as quickly as possible. Mr. O'Connor was convinced that the copper cloth which was procured to the Company was the copper cloth which had been stolen. I do not think it necessary to set out here the evidence of Rahmat Ali. It was disbelieved by the Joint Magistrate, and I think rightly disbelieved. The more one reads it, the more he feels very doubtful about Rahmat Ali's bona fides about this transaction. The evidence given, which connects Muhammad Ibrahim with the offence for which he had to answer is (1) possession of the copper wire, but possession some 5 weeks after it had been stolen, (2) the account which Muhammad Ibrahim gives as to how he came to be possessed of this copper wire.

4. On behalf of the prosecution it is contended

(1) that Muhammad Ibrahim must have known that this copper wire which was found with him was not second-hand property,

(2) that he purchased it from a suspicious character,

(3) that he purchased it far below what he knew to be its real value. The ground on which I am asked to draw the inference that the copper wire was not second-hand

property and could not have been mistaken as being a second-hand property is the peculiar nature of the copper wire and its appearance. The account given by Muhammad Ibrahim, supported as it is by the evidence of Gaya Prasad, even supposing this article to be of a very peculiar nature, is not, in my opinion, sufficient to show that Muhammad Ibrahim must have known it to be not second-hand property but the original property stolen. In *Empress v. Rango Timaji* 6 B. 402, Mr. Justice Melvill says that it is not sufficient for the prosecution to show that the accused person was careless or that he had reason to suspect that the property was stolen or that he did not make sufficient enquiry to ascertain whether the same had been honestly acquired. The word 'believe' is a very much stronger word than 'suspect' and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. In the present case the property being put before a person of the trade and profession to which Muhammad Ibrahim belonged, its appearance would not be sufficient to show that it necessarily was stolen property. The cooper cloth may have been of a very peculiar kind, but there is evidence on the record to show that property of the same kind or very like it had been to the Cawnpore market on other occasions. The property had been sold to him at 10 o'clock in the morning and the sale was in the Cawnpore bazar. At any rate there was the witness Gaya Prasad. We are not dealing with property sold under cover of night or in any place other than that where we would expect such property to be sold. While the evidence shows that Muhammad Ibrahim did ask Ram Narain where he had got this property from, he was met with the answer that it had remained for sometime at his shop. That might or might not be in itself an answer which ought to have put Muhammad Ibrahim upon his guard. But I am not prepared to hold that looking to the profession of the two men, the time of the sale, and the place of the sale, it was the duty of Muhammad Ibrahim to have said to Ram Narain 'I do not believe you and insist upon knowing whence you have got it in the first instance'. A prudent man might have put such a question, but simply upon the fact that Muhammad Ibrahim did not further press the question I am not prepared to hold that he had conceived guilty knowledge regarding this article. We are not dealing with organised rules about the reception of doubtful property such as prevail in London or other cities in

Europe, and the evidence does not show and I know of no rule at present in existence in India unless there be one in Presidency towns where a dealer in second-hand goods is bound to make a detailed inquiry before he takes over property sold to him by another second-hand dealer. There remains the question of price. Muhammad Ibrahim did give Rs. 48 for what a few days afterwards he sold to the Empire Engineering Company for Rs. 112-8. This is suspicious, but I gather Mr. O'Connor did expect to have to pay Rs. 2-4 or something thereabout per running foot for this material. He was in urgent need of it and was pressing Rahmat Ali to get it anyhow. Rahmat Ali may or may not have passed on information as to what Muhammad Ibrahim might expect to get. I do not suppose he would have any scruples in selling the material at whatever price he might get for it. To hold specially in India that, because a second-hand dealer if he sees his purchaser eager, would feel any compunction about asking any possible amount for which he would sell would be very dangerous. The prosecution contends that Muhammad Ibrahim ought to have at any rate suspected the property to be stolen property and that he ought to have referred the matter to the Police. I am not able to follow this. One would gladly follow it, but one's experience in India shows that it will be dangerous to suspect a man of retaining stolen property knowing it to be stolen merely because he had a price offered to him and the offer was far above what he had paid for the article. After carefully considering the evidence, I have come to the conclusion that it is not sufficient evidence of guilty knowledge. The matter is very suspicious, but it is not beyond the possibility of a doubt, and I am bound to give the accused the benefit of the doubt. I find Muhammad Ibrahim not guilty of the offence with which he was charged, and I direct that the bail bond which he entered be discharged.