

Chhadami Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/469372

Court : Allahabad

Decided On : Nov-29-1939

Reported in : AIR1940All259

Appellant : Chhadami

Respondent : Emperor

Judgement :

Collister, J.

1. Chhadami has been convicted under S 457, Penal Code, on a charge of having stolen a pair of shoes from the verandah of a house. Having regard to his previous convictions and the fact that he was a registered member of the criminal tribes, under Section 10 B, Criminal Tribes Act, he has been sentenced to transportation for life. He appealed from jail to this Court and his appeal was admitted. The facts as alleged by the prosecution are as follows: On the night between 25th and 26th December 1938, one Sheo Singh was sleeping on a verandah or covered chabutra. He is the chaukidar of a man named Lala Badri Narain, a resident of Etawah, and this chabutra or verandah apparently forms part of his house. Sheo Singh says that he was roused from sleep by a slight noise and he jumped up in time to see a man running away with his shoes which had been under neath the charpoy. On his shouting that a thief was running off with his shoes, Bisal Singh and Gopi Nath came up. The three men then gave chase and in the meanwhile

the head constable who was on patrol duty with a couple of constables, came from the opposite direction and caught the appellant and searched his person and recovered Sheo Singh's shoes, which were wrapped up in a piece of cloth. Sheo Singh lodged a report at the police station at 3-30 A.M. The evidence of Sheo Singh is corroborated by Gopi Nath and Bisal Singh. The former is a sonar and the latter a thakur.

2. The appellant's defence before the Magistrate was that he had been falsely implicated because he was an ex convict. Before the Judge he said that Sheo Singh owed him Rs. 5 and when he demanded payment Sheo Singh raised a hue and cry and said that the appellant had stolen his shoes. No questions were put in cross-examination to any of the witnesses for the prosecution and no witnesses were called in defence. It is perhaps somewhat odd that the appellant should not have thrown away the incriminating shoes in the darkness when he saw that his capture was inevitable and it may seem a somewhat curious coincidence that this police patrol happened to be coming along at that particular moment, but there is no actual impossibility in either of these two circumstances and we can find no grounds for disbelieving the testimony of Gopi Nath and Bisal Singh who are prima facie independent persons and appear, in the absence of any cross-examination, to be witnesses of truth. Having regard to the state of the evidence, we have no option but to hold that the appellant did in fact steal this pair of shoes. There remains the question as to whether or not he has been rightly convicted under Section 457, Penal Code. The charge against him was that he committed lurking house trespass by night with a view to commit theft, but we are not satisfied that his conduct, as it appears from the evidence, amounts to lurking house trespass. Section 443, Penal Code, provides:

Whoever commits house trespass having taken precautions to conceal such house trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit lurking house trespass.

3. In the present case there is nothing whatsoever on the record to show that the appellant took any precautions to conceal his act of house trespass from Sheo

Singh. For aught we know to the contrary, the appellant may have been coming along that night, saw the chaukidar asleep on the verandah, seized his opportunity and snatched the pair of shoes from under the bed and then ran away, waking the chaukidar in the process. There is nothing to indicate that he took any active steps to conceal his presence. In *Budha v. Emperor* (1916) 3 AIR Lah 425 a man had entered the courtyard of a haveli through the deorhi, which had no door attached to it, and he was caught in the courtyard, his intention apparently being to commit theft of cattle. A Bench of the Punjab Chief Court held that lurking house trespass was not established. The learned Judges observed:

We do not think it can be said that the mere fact that a house trespass was committed by night makes the offence one of lurking house trespass. In order to constitute lurking house trespass we are of opinion that the offender must take some active means to conceal his presence....

4. The conviction was accordingly altered to one under Section 451, Penal Code. We are in agreement with the view which was expressed in that case and since there is nothing on the record of the case out of which the present appeal arises to indicate that the appellant took any steps of any kind whatsoever to conceal the fact of his presence, his conviction under Section 457, Penal Code, cannot stand. We accordingly substitute a conviction under Section 451, Penal Code. There remains the question of sentence. Section 451 is not one of the Sections in Sch. 1, Criminal Tribes Act, and therefore Section 23 of the Act is not applicable. The appellant is an old man of about sixty and the property which he stole consisted of a pair of old shoes worth a few annas. Having regard to these circumstances we are of opinion that a sentence of one year's rigorous imprisonment will meet the ends of justice. In the result we alter the conviction to a conviction under Section 451, Penal Code, and we reduce the sentence to one year's rigorous imprisonment. In other respects this appeal is dismissed.