Babu Lal Vs. the State

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Court : Allahabad

Decided On : May-30-1950

Reported in : AIR1950All631

Judge : Misra, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 411; Evidence Act, 1872 - Sections 114

Appeal No. : Criminal Revn. No. 50 of 1950

Appellant : Babu Lal

Respondent : The State

Advocate for Def. : N.N. Beg, Govt. Advocate

Advocate for Pet/Ap. : Shankar Sahai Saxena, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

Misra, J.

1. Babu Lal Sonar, resident of Maida Wali Gali, police station Chowk Lucknow, was convicted by a Judicial Magistrate of Lucknow of au offence under Section

411, Penal Code, for retaining stolen properties Exs. I to VII in his possession. These articles along with a large number of others totalling about 144 in number were recovered from the possession of the applicant on 20th November 1947, on search of his house in the course of investigation regarding a burglary.

2. It has been held by the Courts below that four of the aforesaid articles were stolen from the house of Abdul Rahman on 1st January 19i6, and one of them, namely, EX. v II was one of the articles lost in a burglary which took place at the house of Captain Radha Krishna on the night between 5th and 6th July 1946. The learned Magistrate as well as the learned Civil and Sessions Judge in appeal held that there were circumstances which indicated that the accused Babu Lal retained the articles knowing or having reason to believe that they were stolen properties. These circumstances were stated by the trial Court to be as follows: (l) That most of the articles recovered were things of daily use, Exs. I to IV being utensils and Ex. VII a used leather purse but they were recovered from the boxes of the accused one of which was locked, (a) That the name of Chhotey, a deceased son of Abdul Rahman, was engraved on Ex. II a lagan and a piece of paper was pasted over it. (3) That the evidence indicated that Ex. IV a tabak originally had the name of Abdul Rahman engraved on it but it was removed either by erasing it or rubbing it out; (4) That the articles were the proceeds of two different thefts in Lucknow; and (5) That the recovery of the purse was denied by the accused and the explanation given by him regarding possession of the other articles was demonstrably false.

3. Upon the findings thus given the Courts below agreed that Babu Lal was guilty of an offence under Section 411, Penal Code, and that the sentence of three months rigorous imprisonment was well deserved.

4. The applicant's contention in revision is based upon a remark made in the course of the judgment by the learned Civil and Sessions Judge to the effect that a presumption that the property was stolen property could also be raised against the accused under Section 114, Evidence Act. The argument on behalf of the applicant is that in cases where the theft was not a recent one, possession of stolen property would not attract the presumption referred to in ill. (a) of Section

114, Evidence Act, The existence of knowledge of an accused parson can be seldom proved affirmatively by positive evidence. The prosecution in cases under Section 411, Penal Code, has, therefore, to depend generally either on a presumption arising from possession of recently stolen properties or from inferences derived from proof of circumstances which render it difficult to exclude the fact of knowledge. Presumptions of fact it is well known are nothing more than logical inferences of the existence of fact drawn from other proved or known facts. They are called presumptions in legal vocabulary if they are drawn on the basis of any artificial legal formula. They are inferences if in reaching them the aid of such formula is unnecessary. In the present case, the cumulative effect of the proved circumstance detailed above was that the person from whose possession the articles were recovered had guilty knowledge--knowledge that is to say of something which impelled him into thinking that the articles should be kept hidden and the names engraved on two of them should be obliterated. The false explanation of the origin of possession is another factor pointing in the same direction. The Courts below were, in my opinion, justified in holding that the ingredients of the offence of retaining stolen property were sufficiently made out against Babu Lal.

5. A great deal of argument was advanced for the proposition that an accused person should not be called upon to explain his possession of properties unless the theft was a recent one. I find it difficult to lay down any rule of law in this regard. The principal case cited on the subject Emperor v. Sughar Singh, 29 ALL. 138: (4 Cr. L. J. 436) is to my mind not an authority for the broad proposition which is advocated on behalf of the accused. A good deal depends on the circumstances of each case and it is obivious that where the nature of the property or the circumstances indicate that possession is not in the natural course of things but is incriminatory, the fact that a false explanation for possession is given by the accused renders the prosecution case stronger.

6. There is no substance in this revision. I dismiss it. The applicant is on bail. He must surrender to serve out the sentence. His bail bonds are cancelled.