

Ram Charan Vs. Emperor

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Court : Allahabad

Decided On : Apr-03-1933

Reported in : AIR1933All434a; 145Ind.Cas.130

Appellant : Ram Charan

Respondent : Emperor

Judgement :

Niamatullah, J.

1. This is a reference by the learned Sessions Judge of Banda recommending that the conviction of the applicant Ram Charan of an offence under Section 411, Penal Code, and sentence of fine of Rs. 50 be set aside. The facts established by the evidence and found by the Magistrate who tried the applicant are not in dispute. The complainant Midwa lost some property in course of a theft which took place in his house one night. He reported the theft at the police station expressing a suspicion that certain persons named by him including a son of the applicant were responsible for the theft. A search in the appellant's house resulted in the discovery of two silver ornaments found in a corn bin which, at that time, contained dried Mahwa flowers. It is admitted by the prosecution witnesses that in the house occupied by the applicant also reside his three grown-up sons one of whom was suspected by the complainant. The applicant's wife also lives in the same house. There may be other members of the family residing in that house but the evidence

does not mention any.

2. Ignoring all possibilities of the articles in question being introduced in the house without knowledge of the occupants thereof and ignoring also the fact that ornaments which are of a common type might possibly have been wrongly, though in good faith, identified by the complainant to be his, I would consider the question whether, in the circumstances of the case, the applicant can be said to have been in possession of the ornaments knowing the same to be stolen property. It seems to me that the police and the Magistrate proceeded on the assumption that property found in a house occupied by several male and female members residing therein should be considered to be in possession of the head of the family. This is a wholly unwarranted assumption and can have no place in cases in which possession and criminal intent form the essential elements of an offence. It is equally unwarranted to assume that every one residing in the house should be deemed to be in possession of an article recovered from it. Possession implies dominion and consciousness in the mind of the person having dominion over an object that he has it and can exercise it. A person cannot be said to be in possession of a thing unless it is shown by evidence that he had dominion over it and knew that he had it. The mere fact that a thing is found in a house occupied by a person in common with others or at a place in the house which is as much accessible to others as to him is no proof that he was in possession of it. To bring it home to him some additional circumstance ought to be established; for example, that it was found in a room exclusively occupied by him or in a box or trunk or other receptacle exclusively used by him. Without proof of some such fact as gives rise to the inference that he and no else to the exclusion of himself was in possession of the article in question. It is true that in many cases evidence of the kind illustrated is difficult to obtain as outsiders cannot be in a position to give the requisite evidence and the members of the family are interested in suppressing evidence. But difficulty in securing evidence cannot obviously justify dispensing with it and assuming the guilt of any one of the members of the family. It is needless to say that a rule of this kind is not only grossly arbitrary but fraught with great danger and possibility of abuse. In the case before me the Magistrate arrived at the conclusion that:

Ram Charan is guilty of the offence of dishonestly receiving or retaining stolen property knowing it to be stolen property as he had concealed them in the Mahwa stored in a grain cell.

3. If there had been evidence before him that it was Ram Charan who had concealed the two articles said to have been stolen in the corn bin, the conviction might have been justified but there was no such evidence and the remark that Ram Charan had concealed them in the corn bin is the Magistrate's inference probably from the fact that Ram Charan is the, oldest of all those living in the house and is the head of the family. The view taken by the learned Sessions Judge is correct. I accept the reference and set aside the conviction and sentence of Ram Charan and direct that the fine, if paid, be refunded.

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