

**Reoti Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Jan-11-1933

**Reported in :** AIR1933All461; 145Ind.Cas.609

**Appellant :** Reoti

**Respondent :** Emperor

**Judgement :**

**Bajpai, J.**

1. This appeal is connected with criminal Appeal No. 848 and I propose' to deliver a consolidated judgment in both appeals. It appears that Pt. Harsarup, Sub-Inspector of village Chandpur was conducting an inquiry in connexion with a cattle theft in village Ismailpur on 2nd May 1932. It became necessary for him at one stage of the inquiry to send for the chaukidar and the chaukidar was accordingly sent for. There was some delay in the arrival of the chaukidar and on questioning the chaukidar the latter replied that he had gone to wash his hands and face near a tube well where he came across three suspicious persons who on coming to know that the Sub-Inspector was in the village walked away from the place in a suspicious manner. The Sub-Inspector, when he got this information, in company with certain villagers who were with him proceeded towards the tube-well and this party saw three persons going ahead at a distance of about a furlong or so. These three persons when asked to stop did not stop but wanted to run away and

therefore they were pursued. Two of them were caught but the third increased his speed with the result that the pursuers also increased their speed. The person who was running away then fired several shots at the pursuers and the evidence is that these shots were aimed on the Sub-Inspector or some other definite member of pursuing party. He was ultimately arrested and a loaded revolver was recovered from his person. There were three empty and two live cartridges in the chambers of the revolver. This man was Reoti.

2. Upon these facts Reoti, the appellant before me, was charged under Section 307, Penal Code. The gravamen of the offence so far as this charge is concerned was that he fired at the pursuing party and if any one of them had been killed the accused would have been guilty under Section 302, Penal Code. The accused had no licence for the said revolver and therefore in a separate trial he was charged under the Arms Act. The gravamen of the offence therein lies in the fact that he was in possession of an arm without a licence. The revolver itself has been proved to be stolen property and therefore the accused was charged in a separate trial under Section 411, Penal Code. The gravamen of the offence in connexion with that charge lies in the fact that he was in possession of stolen property knowing or having reason to believe that it was stolen. He has been convicted in all the three trials and the sentence passed upon him is four years under Section 307, Penal Code, one year under the Arms Act, two years under Section 411, Penal Code. All these sentences have been made; to run consecutively, the consequence being that for facts which might to a certain extent be said to be parts of the same transaction the accused has been convicted in three different trials and sentenced to an aggregate term of seven years.

3. It has been argued before me that although under the law it may be permissible to charge him under Section 307, Penal Code, and one out of the other two offences, it is not permissible to charge him under the Arms Act as well as under Section 411, Penal Code, and the accused is not liable to be punished twice inasmuch as the act of omission which constitutes the offence under these two enactments is the same and reliance is placed on Section 26, General Clauses Act. I am unable to agree with this contention. The act or omission which constitutes the offence under the Arms Act is the possession of the revolver

without a licence; the act or omission which constitutes an offence under Section 411, I.P.C., is the possession of an article which is stolen with the knowledge or belief that it is stolen. It is immaterial that the article in both cases happens to be a revolver. The chief ingredient of the two charges has been explained before and the important point to be noted is that it is not the same act or omission which constitutes the offence under the two enactments. There is therefore no legal bar to the two trials, one under the Arms Act and the other under Section 411, Penal Code and the accused can be punished in both the trials.

4. As to the conviction under Section 307, Penal Code, it is contended before me that apart from certain defects in the prosecution case which will be mentioned presently the conviction is not sound in law. The argument is, assuming the prosecution case to be true, that although the accused did fire certain shots when he was being pursued, the object of firing shots away not to injure anybody but simply to frighten the pursuers and the object is abundantly clear by reason of the fact that nobody was injured, and reliance is placed upon the case of *Pir Mohammad v. Emperor A.I.R. 1923, Lah. 415*. The facts of that case are different because Campbell, J., laid stress upon the fact that there was no evidence in the case before him to the effect that the accused pointed his revolver in the direction of the person who was being pursued and in respect of whom the accused was charged. In the present case the entire evidence is to the effect that accused fired shots at the Sub-Inspector or some other definite person of the pursuing party. The main defect that has been pointed out in the prosecution case is that the Sub-Inspector has exaggerated the case and to a certain extent has not given out the truth. When the revolver was recovered from the accused it contained two live and three empty cartridges and it is stated in evidence that the accused fired five times. There is thus a discrepancy inasmuch as the revolver contained only five chambers. The Sub-Inspector explains it by saying that the accused had re-loaded the revolver twice but this fact is not mentioned in the first information report, I am not prepared to attach undue importance to this circumstance and to hold that the entire case for the prosecution is consequently false. The result therefore is that the conviction of the appellant under Section 307, Penal Code, is sound and I dismiss Appeal No. 847 of 1932. As to Appeal No. 848 of 1932 which is directed against the appellant's conviction under Section 411, Penal Code, I have already

repelled the legal contention, on behalf of the appellant and have held that Section 26, General Clauses Act is no bar to the appellant being tried both under the Arms Act as well as under Section 411, Penal Code. It now remains to be seen whether the conviction under Section 411 is justified by the evidence on the record. The facts have already been stated in an earlier part of my judgment. It has further been established that the revolver which was found in the possession of the appellant was stolen from Ch. Harhans Singh. The report of the theft was made on 8th October 1931, having taken place on the night before. The revolver was found in possession of the accused on 2nd May 1932. It is however argued on behalf of the appellant that there is no evidence that the accused knew or had reason to believe that the revolver was stolen property. Evidence of a positive character fixing knowledge or belief in an accused under circumstances similar to the present is extremely difficult to produce and the Court has to rely upon certain presumptions. In the present case the article was stolen in October and it was recovered from the possession of the accused in May. Therefore regard being had to Section 114, Evidence Act, I am entitled to presume that the accused is either a thief or a retainer of stolen goods knowing them to be stolen unless he can account for his possession. It is true that it is not possible to say that the distance of time between October and May is so short that such a presumption must necessarily arise, but where the accused has not been able to account for the possession of an article which is not easily obtained in market overt without due caution a presumption such as mentioned by me can arise. I am therefore of the opinion that the accused was rightly convicted under Section 411, Penal Code. I dismiss Appeal No. 848 of 1932.

5. The aggregate amount of the sentences, if they are made to run consecutively, is seven years. Under Section 397, Criminal P.C., I direct that the sentences under Section 411, Penal Code, and under Section 307, Penal Code, shall run concurrently together and with the previous sentence under the Arms Act.