

Bharos Vs. Emperor

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Court : Allahabad

Decided On : Aug-16-1923

Reported in : AIR1924All192; 81Ind.Cas.558

Judge : Sulaiman, J.

Appellant : Bharos

Respondent : Emperor

Judgement :

Sulaiman, J.

1. This is a criminal revision from a conviction under Section 411 of the Indian Penal Code. On the 23rd of April 1923 a burglary was committed in the house of one Musammat, Maharaji, and she made a report the next morning, giving a list of articles including wearing apparel. It is important to note that among the articles she mentioned was a dhoti said to have had a tear in the border. A few days after that the Police searched the accused's house and, it is said, in the presence of two search witnesses, only one of whom has been examined in this Case, a dhoti was found hanging on a peg in a room which has no roof over it. This room contained some other articles of house-hold besides the dhoti. In front of this room there is another room, which is covered by a roof, and then there is a thatched portion of the house in which the accused, his wife and children live.

2. Musammat Maharaji and her son both recognised the dhoti as belonging to them, and the accused has been convicted under Section 411 of receiving or retaining stolen property.

3. The defence put forward, on behalf of the accused was that some five or six years before the alleged occurrence, he had filed a complaint for bribery against a local Police officer and that, therefore, the Police had a grudge against him. It was further suggested on his behalf that inasmuch as this room had no roof over it, it was very easy for any one to plant the dhoti in it.

4. Both the Courts below accepted the evidence of Musammat Maharaji and her son to the effect that the dhoti discovered in the accused's house was the one which had been stolen from her house.

5. In revision I am bound to accept this finding as final. Although the dhoti was an article of common use, nevertheless as it had a tear in the border, which was a good identifying mark, I am unable to say that the finding of the Courts below as to the identity of this dhoti was in any way unjustified.

6. The question still remains whether these facts are sufficient for the conviction of the applicant.

7. Section 411 of the Indian Penal Code makes dishonestly receiving or retaining any stolen property, knowing or having belief that the same was stolen property, punishable. Of course, it is obvious that there is a distinction between receiving and retaining it, and merely being in constructive possession of it. It was pointed out by Oldfield, J., in the case of *Queen-Empress v. Burke* 6 A. 224; A.W.N. (1884) 55 : 3 Ind. Dec. (N.S.) 832 that an accused person cannot be convicted under Section 411 merely on showing that he was in possession of certain property and failed to account for its possession. The prosecution must prove both that the property was stolen and that the accused received it or retained it dishonestly. At the same time, it is to be borne in mind, that under certain circumstances a Court is entitled to draw a presumption under Section 114 of the Evidence Act from the fact of possession. If the possession of an article is proved, the Court may presume that the person in possession of the stolen goods soon

after the theft is either guilty of theft or of receiving the goods knowing them to be stolen, unless he can account for his possession vide Illustration (a). The question then remains whether the circumstances of this case are such that it is justifiable to draw the presumption of the guilt of the accused under Section 114 from the mere fact that the dhoti was found in his house. The room in which this dhoti was found is not one in which the accused habitually sleeps. He is not the only occupant of the house; there are his wife and children who also live in it. The dhoti is a zanana one which would ordinarily be worn by a woman. There is no evidence to show that the accused was ever seen in possession of the dhoti. It is true that he is the master of the house, and in that way he may be said to be in constructive possession of everything in the house. But in order to infer a guilty intention from the mere fact of constructive possession, it is necessary to show some thing more which would justify a Court in inferring that he had knowledge of its existence in the house. For instance if the articles were in a place which is constantly used by the accused, and being in such a place could not have been overlooked by him, the inference would be justified. Or from its bulk or other circumstances like the locking up of it by him in a box, the Court may presume that the accused had knowledge that the article was in the house. In the present case, however, I find it impossible to say that there is a necessary inference that the accused had knowledge that the dhoti was concealed in the room attached to his house, There is no other evidence against him but the fact that the article was discovered in his house. This, therefore, leaves a reasonable doubt, in my mind, that the accused himself might not have been the person who actually received this article. It is necessary to suggest who else might have been the person concerned. There is a possibility that any one of the other occupants might have received it and retained it. I, therefore, feel bound to give the accused the benefit of the doubt. I allow this application, set aside the conviction sentence passed on him, and direct that he be released.