

Gajadhar Vs. State

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Court : Allahabad

Decided On : Mar-17-1971

Reported in : 1971CriLJ1361

Judge : H.C.P. Tripathi, J.

Appellant : Gajadhar

Respondent : State

Judgement :

ORDER

H.C.P. Tripathi, J.

1. Applicant Gajadhar Prasad was convicted by a Magistrate First Class for an offence Under Section 380 of the Indian Penal Code and sentenced to one year's rigorous imprisonment.
2. On appeal, his conviction and sentence were confirmed by the learned I Temporary Civil and Sessions Judge, Hamirpur.
3. The prosecution story in brief is as follows :

Motilal, brother of applicant Gajadhar Prasad and Banshidhar (P.W. 8) jointly obtained a Truck on hire purchase agreement from Reliable Finance Corporation Private Ltd., New Delhi. On 2-10-1961, Moti Lai and Banshidhar agreed that Moti

Lai alone should use the truck and be liable for the dues of the Reliable Finance Corporation Private Ltd. The aforesaid agreement was reduced into writing on a stamp paper Ex. Ka-1. Both the parties handed over the agreement deed (Ex. Ka-1) to one Chandra Shekhar (P.W. 1) for its safe custody. The instalments due on hire purchase agreement to Reliable Finance Corporation Private Ltd., fell in arrears and a decree was passed in its favour by the arbitrator for Rs. 5,100/- against both Moti Lai and Banshidhar. The aforesaid decree was ultimately made a rule of Court. The decretal amount was realised from Moti Lai alone. Moti Lai in turn filed a suit against Banshidhar for the recovery of half of the decretal amount. Banshidhar contested the suit and filed his written statement on 10-4-1967 denying his liability on the basis of the agreement deed (Ex. Ka-1) referred to above. Banshidhar moved the learned Munsif before whom the suit was pending for summoning the deed of agreement from Chandra Shekhar.

On 25-4-1967, Gajadhar Prasad applicant came to Chandra Shekhar and asked him to show the deed of agreement. Chandra Shekhar took it out from a box which was kept in his outer sitting room in the presence of Gajadhar and showed the deed of agreement to him. Gajadhar perused the deed of agreement and then returned it to Chandra Shekhar, who put it back in the same box. The box was, however, not locked. On 26-4-1967 in the morning at about 6.30 A. M. Gajadhar came to the house of Chandra Shekhar, entered his Baithak, opened the box in his absence, took out the deed of agreement and ran away with it. Batti, the servant of Chandra Shekhar saw him running with the deed of agreement and raised an alarm. Chandra Shekhar and some others chased him. Gajadhar tore away that portion of the agreement, which bore the signatures of the executants, gulped it and threw the rest on the ground and ran away. The deed of agreement in its torn condition was picked up by Chandra Shekhar, who reported the incident to the police, on the basis of which a case was registered and the applicant was sent up for trial.

4. At the trial Gajadhar Prasad applicant pleaded not guilty and attributed his false implication due to enmity. He examined some witnesses in his defence.

5. Prosecution case was unfolded by Chandra Shekhar, who was corroborated by his servant Batti (P.W. 4) and his neighbours Krishna Behari and Madho Prasad regarding the dishonest removal of the deed of agreement from his possession by Gajadhar Prasad. Ram Narain (P.W. 6) testified to have scribed the deed of agreement at the instance of Moti Lai and Banshidhar, who had signed it in his presence. Shaukat (P.W. 7) one of the marginal witnesses of the deed of agreement also proved its execution. Banshidhar (P.W. 8) narrated the circumstances in which he and Moti Lai had executed the agreement deed.

6. The trial Magistrate on an appraisal of evidence reached a conclusion that Gajadhar had dishonestly removed the deed of agreement from the custody of Chandra Shekhar and has thereby committed an offence punishable Under Section 380 of the Indian Penal Code.

7. learned Counsel for the applicant has not challenged the prosecution case on facts. He has, however, urged that the facts held established by the courts below amount at the most to constitute mischief punishable Under Section 426, IPC and not an offence of theft committed in any building, tent or vessel, which is used as a human dwelling punishable Under Section 380 of the Indian Penal Code. Reliance was placed by the learned Counsel on the definition of 'Mischief as given Under Section 425 of the Indian Penal Code and on illustration (a) to that section. I find no force in this contention.

8. In the instant case, applicant I took out the deed of agreement from a box kept in the outer sitting room of I Chandra Shekhar and tried to run away I with it. His intention in doing so was to cause wrongful gain to his brother Moti Lai, so that Banshidhar may not be able to rely on the agreement in. order to escape his liability from the claim lodged against him by Moti Lai. It is thus obvious that applicant did intend not only to cause wrongful loss to Banshidhar but also to obtain wrongful gain to himself at his expense. Sec tion 425 of the Indian Penal Code reads:

1. Whether with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or

diminishes its value or utility or affects it injuriously, commits 'mischief',

9. The essential ingredients of this Section are :

1. Intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person.

2. Causing the destruction of some property or any change in it or in its situation.

3. Such change must destroy or diminish its value or utility or affect it injuriously.

10. This section does not envisage an attempt to cause wrongful gain to the wrongdoer but envisages only causing of wrongful loss to the aggrieved person.

11. Section 378, which defines-theft, reads:

Whoever, intending to take dishonestly any moveable property out of: the possession of any person without. that person's consent, moves that property in order to such taking, is said to commit theft.

12. The main ingredients of this. section are:

1. Dishonest intention to take property.

2. The property must be moveable.

3. It should be taken out of the possession of another person.

4. It should be taken without the consent of that person.

5. There must be some removal of the property in order to accomplish-the taking of it.

13. It is obvious that in the instant case all the ingredients of Section 378 of the Indian Penal Code are present. The deed of agreement was removed by the applicant with dishonest intention to get his claim for money against Banshidhar decreed and thereby causing wrongful gain to himself. It is not a case where the document has been mutilated only with a view to cause wrongful loss to

Banshidhar.

14. When a person commits mischief, he only causes loss to another but does not harm himself. In theft the wrongdoer makes dishonest gain at the expense of the victim. This is the essential difference between theft and mischief.

15. The deed of agreement was an unregistered document. If the applicant had succeeded in removing it from the custody of Chandra Shekhar, he would have seriously jeopardised the case of Banshidhar before the Civil Court against his brother. I am, therefore satisfied that the conviction of the applicant for an offence Under Section 380 of the Indian Penal Code is correct on the facts established in the case.

16. Then there remains the question of sentence. It has come in evidence that the amount due on hire purchase agreement had to be deposited by applicant Moti Lai. Learned Counsel for the applicant has stated that Moti Lai's case against Banshidhar for realising half of the amount paid by him has already been dismissed on the basis of the agreement deed in question. Thus the attempt of the applicant to cause wrongful gain to his brother and wrongful loss to Banshidhar has failed on all fronts. That being so, I think a sentence of six months' rigorous imprisonment will meet the ends of justice.

17. In the result, while I confirm the conviction of the applicant for an offence Under Section 380 of the Indian Penal Code, I reduce his sentence to six months' rigorous imprisonment. Applicant is on bail. His bail bonds are cancelled. He shall surrender forthwith to serve out the sentence.

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