

Rogi Vs. Emperor

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Court : Allahabad

Decided On : Aug-07-1935

Reported in : AIR1935All981; 159Ind.Cas.22

Appellant : Rogi

Respondent : Emperor

Judgement :

Iqbal Ahmad, J.

1. This application must be allowed and the applicant must be acquitted. The learned Magistrate, who tried the case summarily, allowed his judgment to be influenced by the opinion of the investigating officer. The learned Magistrate ought to have realized that the opinion of the investigating officer was not legal evidence and could not be made the basis of a finding that the report made by the applicant was false.

2. The applicant is a Bania and has a shop in village Amwakhass where he resides. The shop is in a house some walls of which are made of fencing (tartar) with mud on either side of the same. He made a report in the police station on 15th October 1934. The report was of burglary and six persons were named in the report as being the persons whom the applicant suspected of having committed the theft. In the report it was stated that the burglary was committed by means of a hole in the ground below the wall. Out of the six persons named in the report two were

Dhunias residing in the village who had previous convictions about theft to their credit. One other man named Raghubir was previously in the service of the applicant and had been dismissed a few months before the date of the alleged incident. The investigating officer came to the conclusion that the report was false and accordingly the applicant was tried for an offence punishable under Section 182, Penal Code. As already observed the learned Judge has based the conviction of the applicant solely on the reasons assigned by the investigating officer. Those reasons as summarized in the judgment; of the learned Magistrate are as follows:

(1) That the opening appeared to have been dug both from inside the house as well as outside.

(2) If (the opening) was too small to admit a man getting through it.

(3) In the Kothari in which the hole had been opened there was much more valuable property in the shape of cloth and blankets than the few pieces of cloth that were alleged to have been removed by the thieves.

3. So far as the third ground noted above is concerned it cannot be made the basis of the conclusion that the report was false. The burglars may have removed some of the articles in the kothari and may not have taken, the rest. It may very well be that the burglars had not time enough to make a clean sweep of the room. As regards the first ground noted above all that is necessary to observe is that it is difficult for one to say whether a hole in the ground was dug from inside the house or from outside. In any case the opinion of the investigating officer on the point could not be treated as legal evidence of the fact.

4. On the question whether the opening was big enough to allow a man to pass through the same there was evidence on both sides. One of the prosecution witnesses stated that he at the request of the investigating officer tried to pass through the hole, but could not. There is nothing on the record to show as to whether the suspects named in the report were as fat as the man who was selected by the investigating officer to pass through the hole. If the applicant had fabricated a false case I am not prepared to believe that he would have not made

a hole big enough to admit of a man to pass through the same. In my judgment there was no legal proof on the record of the fact that the report made by the applicant was false. Accordingly I allow this application, set aside the conviction and sentence passed on the applicant and acquit him. He need not surrender to his bail. The bail bond is discharged. The fine if paid will be refunded.

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