

Mahboob Vs. Emperor

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Court : Allahabad

Decided On : Mar-20-1920

Reported in : AIR1920All85; 56Ind.Cas.856

Judge : Walsh, J.

Appellant : Mahboob

Respondent : Emperor

Judgement :

Walsh, J.

1. This is a revision application from an order passed in appeal by the Sessions Judge of Moradabad, upholding a conviction by a First Class Magistrate. The charge was originally against two men, named Munir and Mahbub, for dishonestly receiving or being in possession of stolen property which they must have known to be stolen, The theft is clearly established and although it is not quite true to say that Munir was convicted of the theft, he was convicted of being in wrongful possession of the cattle so shortly after their loss as to raise a strong presumption that in fact he was a thief; though this has not been proved, yet for the purposes of this case it must be taken that he was either the thief or wrongfully came into possession of the animals well knowing that they had just been stolen. He has not appealed, and that fact and his conviction must necessarily form part of the case against his associate Mahbub. That is a risk every man runs who deals with

other persons in the purchase of cattle whom he does not know to be absolutely honest.

2. This is not an appeal. It is an application in revision and, therefore, I have to see not merely whether I disagree with the findings, but whether there is something in the way in which the trial Court has looked at the law or in the method by which it has dealt with the evidence which makes it so doubtful whether the conviction is right that it would amount to a mis-carriage of justice to allow it to stand.

3. Personally I always endeavour to look at the facts in applications in revision in this light rather than in the light of an ordinary appeal. There are two matters about this case to which Mr. Sital Prasad Ghosh on behalf of the applicant has rightly referred and which, I think, would have been enough to upset the conviction altogether if it were not for the other circumstances to which I am going to refer. These two matters are: (1) Both Courts have rightly attached great importance to the fact that these buffaloes were sold by the present applicant for Rs. 79 when their value was really Rs. 190. That is in such cases as this an almost certain test. A man in the ordinary way of business does not sell a thing at less than half price where there is an ordinary market in which he can get anything like the real value. The fallacy in this case is that there was no evidence in law to support a finding that the value of these buffaloes was Rs. 190 and I would warn the lower Courts, if they should happen to read this judgment, to insist in future in these rather difficult cases on having direct evidence of value. There is only a report. Really a report is a dignified name for that which is in truth a complaint by the owners who have lost their animals, and what a man says his own property is worth when he has lost it, and not when he is asking somebody to give him a price, does not always fit in with the real value. Nor does the estimated value always fit in with what a thing actually fetches in the market, so that to establish a value in this case of Rs. 120 in the case of one of the buffaloes, Rs. 50 in the other and Rs. 20 in the third, the accused were entitled in every case to have some sworn testimony of value which they can cross-examine. You cannot examine a report or a complaint, and I have known cases in which owners of property took a very different view of the value when they had been asked some fairly obvious and relevant questions by a hostile critic. So that this view of the case against the applicant, to my mind, breaks down.

Neither of the owners was even called. The Courts below were content with the evidence of the man who was grazing them and with the so-called reports. The reports, I think, were admissible, but any. how they prove nothing except what the men who had lost their cattle thought they were worth.

4. The other point is that the affirmative evidence for the defence does not appear upon the record. I think this is a sound objection. In a case, however tiring it may be, the Magistrate ought really to take down the evidence for the defence with the same care as he does that for the prosecution. He might see reason afterwards to think it was true, but any-how his opinion that it is false is not easy to test at all unless the evidence is recorded.

5. I now come to the circumstances which, in my opinion, justify this conviction and prohibit me from interfering. According to the findings of the first Court Munir and Mahbub were known to one another for two years; secondly, it was a remarkable coincidence that they should run up against one another so shortly after the loss of the cattle; thirdly, the Court has held that Munir never sold to Mahbub and that Munir and Mahbub were really working together. Mahbub himself admits in his statement that after the purchase from Munir he actually took this cattle dealer with him at Re. 0 40 a day, not only that but he took him to the sale and relied upon him as surety in one of the re-sales which took place shortly afterwards. Lastly, and the most important of all, he must have heard in the receipt the address which had been given by Munir in his presence and which he must have known perfectly well to be false. Whether he heard Munir give it does not matter, the receipt was read out to him. All this is conduct pointing strongly to his guilt justifying the view which the Courts below have taken of the facts and leading me to think, although this is really immaterial, that these two men are really the thieves themselves. I see no reason to interfere either with the conviction or the sentence and dismiss this application.