

Sitaram Bhola Ram and ors. Vs. the State

Sitaram Bhola Ram and ors. Vs. the State

SooperKanoon Citation : sooperkanoon.com/497885

Court : Madhya Pradesh

Decided On : Oct-13-1952

Reported in : 1953CriLJ600

Judge : Dixit, J.

Appellant : Sitaram Bhola Ram and ors.

Respondent : The State

Judgement :

ORDER

Dixit, J.

1. This is an application for a revision of an order of the Sessions Judge of Guna affirming the convictions of the applicants under Section 379, Penal Code and sentencing them to pay a fine of Rs. 50/- each.

2. According to the prosecution on the afternoon of 12.10.50, the applicants went towards the field of the complainant Thakur Lal. unyoked a bullock belonging to the complainant and took it away against the wishes of the complainant and left in its place a bullock which the applicants had some months before purchased from the complainant, Sitaram pleaded alibi. The applicant Narayan said that the complainant voluntarily handed over the bullock to the applicant; while the remaining two applicants Jagdish and Ajju said that when Thakur Lal sold a

bullock to the applicants, he had promised that in case the applicants were not satisfied with the bullock sold to them, he would give them another bullock and that accordingly they went to the Held of the complainant to return to him the bullock first taken and to receive another bullock. The applicants Aju and Jajdish also stated that while taking the bullock alleged to have been, stolen, they informed the complainant that they were taking it according to the sale-agreement.

3. The facts of the case are not in dispute. Learned Counsel for the applicants urged that the applicants cannot be held guilty of the offence of theft, for in taking the bullock from the field of the complainant, they only asserted their 'bona fide' right. This contention was raised by the accused in the Courts below also. It was rejected there on the ground that the applicants had failed to prove that it was a term of the purchase of a bullock from the complainant that he would replace it by another bullock in case the applicants did not find it serviceable. The plea was rejected also on the ground that even if the applicants thought that they had a right to take away the bullock, they could not take the law in their own hands and that when the bullock was forcibly taken away against the wishes of the complainant and in his presence, it could not be said that it was taken in assertion of any bona fide right.

In my opinion, the approach of all the Courts below to this question has been erroneous and the plea of the applicants that they took the bullock in assertion of a 'bona fide' right must be accepted. To constitute the offence of theft, the prosecution must establish that there was dishonest intention on the part of the accused in taking the property. The dishonest intention cannot be said to be present when the property is removed in assertion of a 'bona fide' claim of right though unfounded in law and fact. It is, no doubt, true that a mere colourable pretence to obtain and keep possession of the property does not negative the dishonest intention. But the question whether the removal of property was in assertion of a 'bona fide' claim of right must be determined upon all the circumstances of the case, and a Court cannot convict unless it holds that the claim is a mere pretence.

I need not refer to the large number of cases in which these principles have been laid down. But reference to the decision of the Calcutta High Court in-Suraj Ali v. Arphan Ali AIR 1917 Cal 648, may be usefully made where the learned Judges have quoted with approval the following passage from 'Pleas of the Crown' by Sir Mathew Hale:

It is the mind that makes the taking of another's goods to be a felony or a trespass only, but because the intention and mind are secret, the intention must be judged by the circumstances of the fact, and thought, these circumstances are various and may, sometimes decisive, yet regularly and ordinarily these circumstances following direct in this case. If A thinking he hath a title to the horse of B seizeth it as his own, or supposing that B holds, of him distrains the horse of B without cause, this regularly makes it no felony, but a trespass because there is a pretence of title; but yet this may be but a trick to colour a felony and the ordinary discovery of a felonious intent is, if the party doth it secretly, or being charged with the goods denies it.

It is thus clear that the 'bona fide' claim of a right cannot be rejected on the ground that the accused has not shown that the claim is founded in law and fact. Again, if the claim is asserted in the presence of the complainant and the property is removed in his presence, it cannot be said that the property is not removed in the assertion of a 'bona fide' claim of a right. Indeed as observed by Sir Mathew Hale, it is when the property is removed secretly that it could be said that it was removed with a felonious intention and under a pretence. The Courts below were, therefore, not justified in rejecting the plea of the accused that they took the property in assertion of a 'bona fide' claim of right on the ground that the term of the contract had not been proved or that the property was removed or the bullock was taken away in presence of the complainant against his wishes.

From the prosecution evidence, it is clear that at the time of the taking of the bullock, the applicants had a 'bona fide' belief that they had a right to demand and take away another bullock from the complainant in replacement of the one first sold by the complainant to them and that the applicants made this belief known to the complainant at that very time. In these circumstances, it cannot be held that

the claim of the applicants to the bullock was a mere pretence. The claim of the applicants to the bullock may have been unfounded in law and fact, but that itself is not sufficient to infer the conclusion that they had a dishonest intention in taking the bullock.

4. Learned counsel for the applicants also took the objection that the charge was not read out and explained to the accused and that, therefore, the trial was illegal. In the view I have taken of the contention as regards the removal of the bullock in assertion of a 'bona fide' claim of right, it is not necessary to deal with this contention. But it appears that the Court had dispensed with the personal attendance of the accused persons and had permitted them to appear by a pleader. In these circumstances, it would appear on the authority of-'Darabshah' Bomanji Dubash v. Emperor 50 Bom 250 that the charge could have been read out and explained to the pleader if the accused. I, however, do not wish to express any concluded opinion on the question.

5. The result is that this revision petition is allowed and the conviction and sentence imposed on the applicants are set aside. The amount of fine already paid by the applicants be refunded to them.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com