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Court : Madhya Pradesh

Decided On : Aug-27-1952

Reported in : 1953CriLJ1189

Judge : Dixit and ;Chaturvedi, JJ.

Appellant : The State

Respondent : Karan Singh Gujar

Judgement :

Dixit, J.

1. This is an appeal from the decision of the Additional District Magistrate Guna acquitting the respondent Karan Singh of an offence under Section 215, I.P.C.

2. It was alleged by the prosecution that on 4.10.50 a report was lodged with the police by Godi and Bhallu that on 30.9.50 their twelve beefalos had strayed from a jungle where they had been taken for grazing that some two or three days after this report the respondent Karan Singh met Godi and Bhallu in a jungle and promised them to trace the buffaloes on a payment of Rs. 600/-. It is said that accordingly after about ten or eleven days Karan Singh took Godi and Bhallu to a place in the jungle at about 3 in the morning and leaving the complainant at this place, he went away and returned shortly afterwards with two buffaloes and took from Godi and Bhallu Rs. 600/- and that after the receipt of this amount, he again

went away and returned with the remaining buffaloes. The learned Magistrate acquitted the accused on the ground that the prosecution had failed to prove as a positive fact that the buffaloes had been stolen and they had also failed to show that the accused did not use all the means in his power to cause the offender to be apprehended and convicted.

3. Mr. Mungre learned Government Advocate for the State concedes that there is no evidence to show that the buffaloes had been stolen. But he contends that there is sufficient evidence to show that although the buffaloes strayed, some person committed criminal misappropriation in respect of them and thus deprived Godi and Bhallu of the possession of the buffaloes. In order to show that some person committed criminal misappropriation, Mr. Mungre relies solely on the circumstances that the accused took Godi and Bhallu to the jungle at night and that after taking them there, the accused did not point out to them the actual place where the buffaloes were, but himself went alone & returned first with two buffaloes, then demanded the amount of Rs. 600/- and again went alone and brought the remaining buffaloes. Mr. Mungre relies on the decision of the Allahabad High Court in - Yusuf Mian v. Emperor AIR 1938 All 440 (A).

4. In my opinion, this appeal must be rejected. It is quite true that for an offence under Section 215, I.P.C. it is not necessary to prove as a positive fact that the property was stolen. The section says that the property for the recovery of which gratification has been taken or promised must be one of which the under has been deprived of by any offence punishable under the Penal Code. It is clear from this that the deprivation of the property is not confined to one resulting from an act of theft. A person who commits criminal misappropriation of a property also deprives the owner of the possession of the property. The question, therefore, that arises for consideration is whether there is evidence to show that after the buffaloes had strayed, some person detained them by committing an act of criminal misappropriation. In my opinion, there is no such evidence. From the mere fact that the accused took Godi and Bhallu during night-time to the jungle and did not point out to them the actual place where the buffaloes were, it cannot be inferred that some person had committed criminal misappropriation in respect of them, if, as the evidence shows and as has been found by the trial Magistrate, the

buffaloes had strayed, it is possible to conceive that they failed to return to their owner in the ordinary course either because they were entrapped in the jungle or because they were impounded by somebody in a place or because some person had committed criminal misappropriation in respect of them and detained them.

There is nothing in the present case to indicate that the failure of the buffaloes to return to their owners was not and could not have been due to any of the first two causes. If, therefore, as is possible the buffaloes could not return to their owners on account of the first two causes, it cannot be said that the owners were deprived, of the property by an offence punishable under the Code. If in these circumstances, the accused used his efforts to drive the buffaloes from a place from where they could not get out except with the aid of human agency or secured their release from a place of impoundment without letting the complainant know of the place, it cannot be said that he adopted this course because some person had committed criminal misappropriation in respect of the buffaloes. The manner in which the accused returned the buffaloes does not prove the fact that the owners had been deprived of the buffaloes by any offence punishable under the Penal Code. It is obvious that the act of the accused in taking the complainants to the jungle at night, in not disclosing them the place where the buffaloes were and in bringing first two buffaloes and then bringing the remaining buffaloes after the receipt of Rs. 600/- was only to ensure that the complainant paid the amount of Rs. 600/- which they had promised. The Allahabad case cited by the learned Government Advocate is distinguishable on the facts of that case. In the Allahabad case the accused took the complainant to the jungle and pointed out a bullock which had strayed tied to a tree. From the fact that the bullock was tied to a tree, the learned Judge of the Allahabad High Court inferred that the person who tied it up in the jungle deprived the owner of possession of the bullock by committing criminal misappropriation. No such inference can be drawn for the simple reason that there is no material whatsoever, even to suggest why the buffaloes failed to return to their owners in the ordinary course.

5. Before concluding, it must be observed that the learned Magistrate was not right in thinking that in a prosecution under Section 215, it must be proved by the prosecution itself that the accused person did not use all means in his power to

cause the offender to be apprehended. As is clear from the wording of Section 215, I.P.C. the burden of proving that the accused used all means in his power to cause the offender to be apprehended and convicted of the offence, is on the accused. See - Arman Ulla v. Jainulla AIR 1933 Cal 599 (B).

6. For the above reasons I would dismiss this appeal.

7. Chaturvedi J.

I agree.

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