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Jogendra Singh Vs. State

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Court : Orissa

Decided On : Dec-12-1990

Reported in : 1991CriLJ2331; 1991(I)OLR201

Judge : A. Pasayat, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 411; Evidence Act, 1872 - Sections 114

Appeal No. : Criminal Revision No. 46 of 1987

Appellant : Jogendra Singh

Respondent : State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : B. Misra, ;K.N. Jena and ;A.K. Mohapatra, Advs.

Disposition : Revision allowed

Judgement :

A. Pasayat, J.

1. Petitioner calls in question legality of the judgment passed by the learned Sessions Judge Keonjhar, upholding the conviction and sentence awarded by the learned judicial Magistrate, First Class, Barbil stationed at Champua.

2. A brief recital of the factual position as presented by the prosecution, relevant for disposal of this revision, is that on 29-9-198', the Havildar and Sepoy of Tisco, Jo la noticed some people loading iron scrap materials in a truck at Bottom Bin Area, this was brought to the notice of the Assistant Security Officer, who proceeded to the spot, but by that time the truck had already left the place; the security staff kept watch over the movement of the truck, which was found speedily proceeding towards Notified Area Council, Check Gate, Joda, even though the security staff wanted to stop the vehicle, it did not stop, the Assistant Security Officer and the security staff chased the truck and at last the truck stopped at Ranasala Ghat; three persons including the present petitioner were found escaping from the truck, while the petitioner could be caught hold, all others escaped; the present petitioner was the driver of the truck; on interrogation, he named two other persons, who had fled away, to be the owners of the truck, the truck was found to have been loaded with iron scrap materials of Tisco.

3. Plea of the accused persons was one of denial of the occurrence. The petitioner and one Durga Bahadur Thappa stated to , be the owner of the truck faced trial being charged Under Sections 379/411 of the Indian Penal Code (in short the 'IPC). :

4 Twelve witnesses were examined, to further the prosecution case. The trial Court, on consideration of the evidence on record, found both the accused persons guilty Under Section 411, IPC, but not Under Section 379, IPC. It convicted each of them and sentenced to rigorous imprisonment for two years each The conviction and sentence were assailed in appeal before the learned Sessions Judge, Keonjhar, who acquitted the co-accused, but maintained the conviction and sentence of the petitioner.

5. The main plank of argument advanced in support of the petitioner's case is that the ingredients of Section 411, IPC have not been established to warrant any conviction and sentence. It is submitted that a carrier or transporter which has no knowledge that the goods were stolen cannot be held guilty Under Section 411, IPC. The learned Standing Counsel, however, submits that the narration of facts clearly establishes that the accused person had knowledge that the materials were

stolen property and there- fore, the conviction and sentence are in order.

6. On consideration of the rival submissions, I find that the only question that falls for determination is whether the petitioner was guilty of dishonest receipt or retention of stolen property and whether he had knowledge or reason to believe at the time of receipt that the property was obtained in one of the ways indicated above. It is the duty of the prosecution in order to bring home the guilt of person Under Section 411, IPC, and to secure conviction prove that (i) the property in question was 'stolen property' within the meaning of Section 410 of the Code; (i) the stolen property was in possession of the accused; (iii) some other person, other than the accused had possession of the property before the accused got possession of the same; and (iv) the accused had knowledge or reason to believe that the property was stolen property, and with such knowledge or belief dishonestly received it or dishonestly retained it. (See AIR 1954 SC 39: Trimbak v. The State of Madhya Pradesh). The offences for receiving and retaining property are contextually different. The use of alternative expression 'dishonestly receives or retains' in one and the same section requires the prosecutor of proving that the accused either received or retained the property (of course dishonestly), that is to say, that the prosecutor need not prove that it was dishonestly received as distinct- from . dishonestly retained or dishonestly retained as distinct from dishonestly received. It is enough to prove facts which justify inference that the accused either dishonestly received or retained the property. The prosecution has to establish that the property in question was stolen property and there was either dishonest receipt or dishonest retention. A carrier or transporter, who carries or transports goods cannot generally be ascribed with the knowledge about the source of the property. it would be hazardous to presume that because a property is stolen, the carrier or the 'transporter had the necessary knowledge that it was stolen property. In an almost identical; case where some-cable wires belonging to. the Trunk Telephone Exchange, Office in Hubli were found .in .the. rear portion of a tonga when it was. stopped for inspection, it was, held that there was material to ascribe any. knowledge to the carrier- or- the transporter that the property in question was stolen property. Therefore, the. presumption as illustrated in Illustration, (a) to Section 114. of the Evidence .Act was held' not available to. be drawn. The presumption which is proved' by the said Illustration, can only be raised; when a

person is in possession, of the stolen property after the theft. There; t.. Is no material produced in this, case to indicate what is the time of the,' alleged theft. The evidence is temiss in that regard. Therefore,, the view, expressed by the Mysore High Court reported In Vol. XIV(1970) ML. J. (Crl), 59 : Krishna Shstiha Hutagi v. The State of Mysore, appears to be applicable to the facts of the present; case. In the absence of necessary. materials and evidence to show that the goods in question were known to be stolen property to the petitioner, the conviction and consequently the sentence cannot be maintained.

The revision is accordingly allowed. The bail-bonds be discharged.

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