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Bhola Alias Rama Lenka Vs. State

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Court : Orissa

Decided On : Aug-09-1984

Reported in : 58(1984)CLT303; 1984(II)OLR841

Judge : B.K. Behera, J.

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

Appeal No. : Jail Criminal Appeal No. 117 of 1984

Appellant : Bhola Alias Rama Lenka

Respondent : State

Advocate for Def. : N.C. Panigrahi, Addl. Govt. Adv.

Advocate for Pet/Ap. : Akshaya Kumar Nayak, Amicus curiae

Disposition : Appeal allowed

Judgement :

B.K. Behera, J.

1. The appellant stood charged along with some other co-accused persons under Section 395 of the Indian Penal Code (for short, the 'Code') with having committed dacoity in the house of Ashamani, who died sometime after the occurrence, in village Bajana in the district of Balasore at about 8 to 9 p. m. on March 30, 1983.

The appellant and the other cc-accused persons were held not guilty of this charge. Because of the recoveries of some stolen articles including two brass utensils (M. Os, I and II) from the house of the appellant, he has been held guilty under Section 411 of the Code and sentenced thereunder to pay a fine of Rs. 500/- and in default of payment thereof, to suffer simple imprisonment for a period of six months.

2. Mr. Nayak, appearing amicus curiae for the appellant, has submitted before me that the order of conviction cannot be sustained on facts and maintained in law. Mr. Panigrahi, the learned Additional Government Advocate, has supported the order of conviction as well-founded.

3. It would be unnecessary to catalogue the evidence as the only vidence against the appellant was with regard to the recoveries of some articles including M. Os. I and II in the course of investigation on April 6, 1983 as would appear from the evidence of the Investigating Officer (P.W.8).

4. The articles had been seized from the back verandah of the house of the appellant. The evidence did not warrant a conclusion that the appellant was in exclusive and/or conscious possession of these articles prior to their recoveries. No finding has been recorded by the trial Court in this regard. There is no finding either that the place of recoveries was not accessible to other persons. To apply Section 411 of the Code, the accused must have received or retained the stolen ' articles knowing or having reason to believe the same to be stolen properties. No presumption has been drawn by the trial Court under Section 114, Illustration (a) of the Evidence Act. No finding has been recorded by the learned Sessions Judge with regard to the guilty knowledge or reasonable belief on the part of the appellant. On these facts and in these circumstances, the order of conviction cannot be allowed to stand.

5. I would allow the appeal and set aside the order of conviction and sentence passed against the appellant. If the appellant be still in the jail undergoing imprisonment for non-payment of the fine amount, he shall be set at liberty forthwith unless required to be detained otherwise.

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