

Prasad Behera Vs. State

Prasad Behera Vs. State

SooperKanoon Citation : sooperkanoon.com/532325

Court : Orissa

Decided On : Nov-16-1990

Reported in : 1991(I)OLR315

Judge : S.C. Mohapatra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 412

Appeal No. : Criminal Appeal No. 103 of 1984

Appellant : Prasad Behera

Respondent : State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : K.N. Sinha, Adv.

Judgement :

S.C. Mohapatra, J.

1. Conviction Under Section 412, IPC and sentence to undergo RI for ten years is the grievance of the appellant who is on bail.

2. So far as appellant is concerned, prosecution case is that he was in possession of a tape recorder which was identified to be stolen property in a dacoity committed on 17-4-1983.

3. Appellant denied the recovery and pleaded not guilty.

4. Trial Court, on the finding that tape recorder, the stolen property was found to be in a broken suit case to be recovered on the basis of one of the accused leading to such recovery immediately on his arrest, held that accused is guilty of the offence.

5. Coming to the question of sentence, I find absolutely no proportion of the punishment with the crime committed which seems to be arbitrary. There is no reason why maximum sentence of ten years would be imposed on the appellant. However, this is not material to be delved further since I am inclined to acquit the appellant.

6. That the tape recorder is stolen property is beyond any reasonable doubt, It is also well-proved that it is connected with dacoity committed and the same was recovered from the house of the appellant. With these findings it is to be examined if appellant has committed the offence in respect of which he has been committed.

7. Appellant has been convicted Under Section 412, IPC which reads as follows:

'412. Dishonestly receiving property stolen in the commission of a dacoity:-
Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.'

A bare perusal of the provision makes it dear that the ingredients of the offence are as follows :

(a) property is stolen property,

(b) it is connected with dacoity,

(c) accused received or retained it;

(d) such receipt or retention is dishonest; and

(e) accused knew or has reason to believe that the property received or retained by him from a person who belongs to gang of dacoits. '

8. In this case the first two ingredients are only satisfied. There is no evidence worth the name that appellant received it from accused who led to recovery or any other accused of the gang of dacoits. Dacoity was committed on 17-4-1983. Tape recorder was recovered from the house of appellant on 20-4-1983 immediately after arrest of accused who led to recovery. There is clear evidence that appellant was not present in the house at the time of recovery. Clear suggestion has been given that appellant was giving out much before that he would go to Baripada for treatment of his daughter. Merely by proving that the accused who led to discovery was a relation of the appellant, an inference cannot be drawn that he received it from that accused or any of the members of the gang of dacoits.

9. There is also no evidence that the appellant retained it. Question of retention would arise only after receipt. In absence of any material as to when appellant received it question of retention does not arise. Stage of retention comes after receipt of the article. When there is no evidence that the appellant received it question of retention by him does not arise.

10. Assuming that appellant received it, his absence from the house immediately leaving the article, cannot lead to inference that he had a desire to keep it in all circumstances. This ingredient also has not been satisfied on materials on record.

11. Even assuming that appellant received and retained it, there is no material that he dishonestly so received or retained. It may be that the article is stolen property. If knowing it to be stolen property appellant would have received it or retained it dishonest intention might have been inferred unless appellant would have explained circumstances under which such article came to his possession. Even, a doubt might have come to mind that his intention was dishonest if after knowing that the article is stolen, he would have tried to justify his receipt without any basis and from his conduct it could have been proved that he made all endeavour to retain it. There is no such material. If appellant would have knowledge that the

tape recorder belonged to PW 2 and he did not receive it from him or persons who could have bona fide come in to possession from PW 2, an inference might have been drawn. There is no such material in this case.

12. Coming to knowledge, the time gap is so short that even accepting that appellant received it from the accused who is his relation, no inference can be drawn that he had knowledge that it is connected with the dacoity or that his relation was a member of the gang.

13 Analysing the materials from any angle, I am not able to convince that appellant is guilty of the offence.

14. In the result, appellant is acquitted. Bail bond is discharged

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