

Santanu Kumar Das Vs. State of Orissa

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Court : Orissa

Decided On : Sep-10-1992

Reported in : 1992(II)OLR487

Judge : S.K. Mohanty, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 411

Appeal No. : Criminal Revision No. 635 of 1988

Appellant : Santanu Kumar Das

Respondent : State of Orissa

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : Devasis Panda, Adv.

Disposition : Revision allowed

Judgement :

S.K. Mohanty, J.

1. Judgment of conviction for an offence Under Section 411, IPC and sentence of three months rigorous imprisonment imposed on the petitioner by Judicial Magistrate, First Class, Bissam Cuttack and confirmed by Additional Sessions Judge, Koraput, is under challenge in this revision.

2. Prosecution story in brief, is that the informant. (PW 3) runs a video hall at Muniguda. On the night of 20-8-1985 his son closed the video hall and returned home. In the morning of 21-8-1985 when the informant opened the video ha!! he found his VCR and remote controls worth Rs. 18,000/-missing. He then lodged FIR at Muniguda P.S. The above articles were seized by the police from the studio house of the accused petitioner on 22-8-1985. One Bibhisan who was serving in the video hall of the informant along with the present petitioner were charged for various offences with regard to the said articles. The learned Judicial Magistrate acquitted Bibhisan but convicted and sentenced the petitioner as above.

3. Perused the impugned judgments and the evidence recorded by the trial Court and heard the learned counsel for the petitioner and learned Additional Government Advocate.

4. The evidence led by the prosecution reveals that the Police during investigation seized one VCR and two remote controls from the studio house of the petitioner on 22-8-1985. On the previous day the Police had seized a gift letter in respect of the remote controls and a money receipt in respect of the VCR on production by the informant. The serial number of the VCR seized from the studio house of the petitioner tallied with the serial number stated to have been mentioned on the money receipt seized from the informant. But curiously enough the money receipt in question has not been proved in the case and the informant has not disclosed

as to when and from whom he had acquired the VCR and the remote controls. Further more, the seized articles had not been produced in Court and legal evidence is wanting that the seized articles really belonged to the informant.

5. PW 5 is one of the witnesses to the seizure of the articles in question. It reveals from his evidence that there are two rooms in the studio house of the petitioner ; that the seizure took place from the front room; that one Panda was staying in the same room and so also Bibhisan who was working in the video hall of the informant as a gate-keeper. It may be noted here that as per the FIR the informant suspected Bibhisan to have committed the crime. Thus there is no reliable evidence on record to show that the VCR and the two remote controls were seized from the exclusive possession of the accused petitioner. To sustain a conviction Under Section 411 of the Indian Penal Code in the facts of the case, it is incumbent on the prosecution to prove exclusive and conscious possession of the articles in question by the petitioner even if it is assumed that they were stolen property. Prosecution has signally failed to prove the same.

6. In the light of above discussions, it cannot be said that the prosecution has proved beyond doubt the guilt of the accused for the offence Under Section 411, IPC. In result the revision is allowed and the impugned orders of conviction and sentence are set aside.

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