

Bansilal Narbheram Vs. State

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Court : Gujarat

Decided On : Apr-06-1981

Reported in : (1982)1GLR35

Judge : S.L. Talati, J.

Appellant : Bansilal Narbheram

Respondent : State

Judgement :

S.L. Talati, J.

1. The petitioner is convicted for an offence punishable under Section 380 of the Indian Penal Code and sentenced to suffer R.I. for four months and to pay a fine of Rs. 250/- in default to suffer R.I. for fifteen days in Criminal Case No. 1072 of 1980 by the Chief Judicial Magistrate, Baroda. He filed Criminal Appeal No. 5 of 1981 which came to be dismissed by the Additional Sessions Judge, Baroda on 26-2-1981. Thereafter this petition is filed from jail.

2. We have gone through the record and the evidence disclosed that the complainant-Dr. Chandrakant Govindlal was deprived of his Taperecorser on 27-10-1979. He is a person reflecting at No. 9, Shakti Krupa Society, R.V. Desai Road, Baroda. He had left his house at about 9-00 A.M. for his dispensary. His wife was in the kitchen. When he returned at about 12-30 P.M. he learnt that from

drawing room the tape-recorder was missing. He lodged a complaint. During investigation this tape-recorder came to be produced by witness Madhusudan Nagindas in presence of the panchas. The complainant identified the tape-recorder and, therefore, it was established beyond doubt that the tape-recorder was a stolen property.

3. Further evidence disclosed that this Madhusudan had purchased the taperecorder for Rs. 1225/- from witness Robert Reman. There was sufficient evidence to establish this aspect of the case because there was a receipt and the independent witnesses deposed to that aspect of the case. Now, therefore, the evidence fully established that Robert sold the tape-recorder to Madhusudan and Madhusudan was found in possession of the tape-recorder. The evidence of Robert showed that he had purchased several tape-recorders from one Babulal Narottamdas Patel. This Robert is running a cycle shop at Baroda. According to him he knew radio repairing as well. He deposed that the accused used to come to him to take bicycle on hire and the accused gave his nam.? as Babulal Narottamdas Patel. Thereafter according to Robert this Babulal once came to sell a tape-recorder and he purchased it. The accused thereafter sold other seven tape-recorders to him. Ultimately the police showed one photograph to this Robert and Robert identified that person to be the person from whom he had purchased seven tape-recorders and who had given his name as Babulal Narottamdas. The person whose photograph was shown to Robert was arrested. That person is the accused. Therefore, according to the evidence of Robert he purchased seven tape-recorders from the accused. This story was believed to begin with by the police and, therefore, the person whose photograph was shown to Robert was arrested and put in as an accused person. He was prosecuted and the learned Chief Judicial Magistrate, Baroda, accepted the evidence of Robert and convicted the accused for the offence punishable under Section 380 of the Indian Penal Code and the conviction is confirmed.

4. To our mind a serious error of law is committed. Robert did not produce any accounts for the purchase of seven taperecorders. It was not known for how much amount the tape-recorders were purchased. The evidence, therefore, would show that Robert was a person who on his own evidence was guilty for the offence

punishable under Section 411 of the Indian Penal Code. If a person dishonestly receives or retains any stolen property knowing, or having reason to believe the same to be stolen property, he would be guilty for an offence punishable under Section 411 of the Indian Penal Code. The evidence fully disclosed that taperecorder was a stolen property and it belonged to Dr. Chandrakant, the complainant. That property was found in possession of Madhusudan. Madhusudan by independent evidence established that he had purchased it from Robert for a sum of Rs. 1225/-. Therefore, he received for a proper consideration and he is the witness to testify the truthfulness of what Madhusudan stated. That position is not in regard to Robert. There is no evidence to show as to for what amount Robert purchased it. There are no accounts and he though having a bicycle shop, purchased not one but seven tape-recorders one by one from the same person and he never enquired as to how that person was selling seven taperecorders one by one. Therefore, he for improper consideration and, therefore, dishonestly received seven taperecorders knowing or having relation to believe that they were the stolen property from an unknown person. The evidence of such a person cannot be accepted without corroboration. In any event he was an accomplice and an accomplice is unworthy of credit. Illustration (b) to Section 114 of the Indian Evidence Act lays down that an accomplice is unworthy of credit unless he is corroborated in material particulars. There is no corroboration to the evidence of Robert. We are conscious of the fact that Section 133 of the Indian Evidence Act lays down that an accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Illustration (b) to Section 114 and Section 133 of the Evidence Act are required to be read together and the result is that the prudence requires that there should be corroboration. The learned Chief Judicial Magistrate while deciding the case by testimony of an accomplice must be conscious of the Rule of prudence and if after cautioning himself of that rule he because of the peculiar circumstances of that particular case bases the conviction, that conviction would not be illegal. But if the rule of prudence is either forgotten or not kept in mind the result would be that he would be perhaps acting on the evidence of an accomplice and in this particular case the evidence disclosed that Robert himself was either a thief or was a receiver of the stolen property. As soon

as he was caught he had to name somebody and that somebody was an unknown person. Ultimately somebody showed him photograph and he then stated that somebody was the person whose photograph he is being shown. If that was the situation he only got a straw when he was drowning and, therefore, in such a situation if a person names any individual no conviction could be based unless that evidence gets corroboration from other evidence on record. In a case *Bhuboni Sahu v. The King* reported in the following observations are made:

Whilst it is not illegal to act upon the uncorroborated evidence of an accomplice it is a rule of prudence so universally followed as to amount almost to a rule of law that it is made to act upon the evidence of an accomplice unless it is corroborated in material respects so as to implicate the accused; and further the evidence of one accomplice cannot be used to corroborate the evidence of another accomplice. Courts should be slow to depart from the rule of prudence, based on long experience, which requires some independent evidence implicating the particular accused. The danger of acting upon accomplice evidences not merely that the accomplice is on his own admission a man of bad character who took part in the offence and afterwards to save himself betrayed his former associates, and who has placed himself in a position in which he can hardly fail to have a strong bias in favour of the prosecution; the real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story matter which is untrue. The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting upon independent evidence which in some measure implicates each accused.

This ruling is followed by the courts and it is not ever departed. It is clear that the courts below never considered this aspect of the case. It did not occur to them that Robert was an accomplice and his evidence required corroboration. Therefore, an error was committed. It is an error of law which is required to be corrected. This has occasioned failure of justice because conviction is based on the uncorroborated testimony of an accomplice and at the time of recording conviction the courts were not mindful of this rule of prudence and therefore, conviction came to be recorded. This conviction is, therefore, required to be set aside.

5. The result is that this Criminal Revision Application is allowed. The accused is acquitted. Fine if paid is to be refunded. The accused is to be set at liberty forthwith unless required for some other purpose.

Takwani waives notice. Rule is made absolute.

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