State Vs. Indraj

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Court : Rajasthan

Decided On : Sep-12-1955

Reported in : AIR1957Raj234; 1957CriLJ907

Judge : Wanchoo, C.J. and; Dave, J.

Acts : Evidence Act, 1872 - Sections 114

Appeal No. : Criminal Appeal No. 102 of 1953

Appellant : State

Respondent : indraj

Advocate for Def. : Shrikrishanmal, Adv.

Advocate for Pet/Ap. : L.N. Chhangani, Govt. Adv.

Disposition : Appeal allowed

Judgement :

Wanchoo, C.J.

1. This is an appeal by the State against the acquittal of Indraj by a Magistrate of the First Class of an offence under Section 454 of the I. P. C.

2. The prosecution case was briefly this. Shivkaran and his family lived in Nangal Bari. He and members of his family had gone out to their fields on the morning of 29-9-1952 and had shut up the house. When they returned in the evening, they found, that the floor of the house was open and that the lock of an almirah inside the house had been broken. The almirah contained Rs. 350/- in currency notes and a tin-box containing gold and silver ornaments. The money as well as the box of ornaments were found missing. It was also stated in the first report that the house of the accused Indraj was next door and that the accused knew that the money and ornaments were in that almirah. Suspicion was expressed against Indraj on the further ground that he was a gambler. It was also explained that there was delay in the report as they were trying all along to find out about the theft.

3. The report of the incident was made in the Thana on 3-10-1952. The police arrived on the scene on the 4th Oct. and it is said that a list of stolen property was prepared on that day. The list is Ex. P. 5. This list was prepared as there was not a complete list of the stolen property in the first report where only a few ornaments were mentioned and it was stated that the details would be given by Shivkaran and his wife. The case for the prosecution further is that on 6-10-1952, the accused told the police that the stolen property would be found buried at a certain place.

Thereafter the accused took the police to the Bara of one Shivram and the property was recovered from that Bara. It is not in dispute that the Bara is practically an open place accessible to all and sundry. The accused was prosecuted under Sections 454 and 380 of the I. P. C. by the police after this recovery. The Magistrate framed a charge under Section 454 of the I. P. C. but came to the conclusion that the offence had not been proved as the prosecution had failed to prove that the articles belonged to Shiv Karan and his daughter.

4. It may be mentioned that a large number of ornaments along with some cash was recovered from the Bara of Shivram in a tin-box. This tin-box is said to be the same which was taken away from the house of Shivkaran. The accused gave a story of his own about this recovery. That story was that the ornaments recovered as well as the money found in the box belonged to the accused,

The Police had started beating up the accused and consequently, the accused put the ornaments and Rs. 326/- in the tin-box and brought them from his house and gave them to one Maidhan. He told Maidhan to hand over these things to the police and save his life, as otherwise the police would not rest content till he was killed. Maidhan took the ornaments and the money along with the box to the Police. The Police, however, refused to accept the box containing these things in that manner and suggested that the box should be buried somewhere in a heap of rubbish and the accused should take it out from that rubbish and give it over to the Police.

Consequently, Maidhan buried this box containing ornaments and money in the rubbish heap and told the accused where he had buried it and asked him to take it out and hand it over to the police. So the accused took the Sub-Inspector to that rubbish heap and in the presence of witnesses took out the box from the rubbish heap and handed if, over to the Sub-Inspector. The Sub-Inspector then opened the box and prepared a list of things found in St.

5. The accused had also made a confession Ex. P. 7. He, however, retracted it in the Magistrate's court and said that he had made it because of fear of the police. We need not, however; refer to this confession in detail because the Magistrate, who took down this confession, did not give the certificate under Section 164 Sub-section (3) of the Code of Criminal Procedure after recording it. It was permissible to make up that defect by examining the Magistrate under Section 533 of the Code of Criminal Procedure.

We find that the Magistrate was actually examined in the court below, but unfortunately, no one seemed to have realised that the certificate required by Section 164 (3) Cr. P. C. was missing from this confession and, therefore, the Magistrate was not asked during his examination in the court below whether he was satisfied as required by Section 164 (3) Cr. P. C. It is, in our opinion, too late now to ask us to recall the Magistrate and fill up the gap which the prosecution has left in the evidence for want of proper care. We shall, therefore, overlook this confession altogether and proceed to decide the appeal on the basis of the remaining evidence.

6. The sheet-anchor of the prosecution case la the recovery of the stolen articles at the instance of the accused and we are asked to apply the presumption of Section 114, Illustration (a) of the Indian Evidence Act in this case. In this connection, reliance was placed on Trimbak v. State of Madhya Pradesh AIR 1954 SC 39 (A) and the argument on behalf of the accused is that as the recovery took place from an open piece of land accessible to all and sundry, no presumption under Section 114 Illustration (a) can be properly drawn in this case and that it is not, therefore, necessary for us to examine the evidence further.

It becomes necessary, therefore, to examine Trimbak's case (A) and see exactly what has been decided in that case. The facts of that case were that the accused was prosecuted under Section 335 of the I. P. C, and the main evidence against him consisted of recovery of certain stolen property at his instance. The property in that case was recovered from an 'open field which was accessible to all and which did not even, belong to the appellant. The question then arose whether in such circumstances, recovery of certain stolen property from the field at the instance of the accused was sufficient for his conviction. The Magistrate had acquitted him, but on appeal by the State the High Court of Nagpur convicted him under Section 411 of the I. P. C.

The law on the point has been laid down by the Supreme Court in the following words: .

'When the field from which the ornaments were recovered was an open one, and accessible to all and sundry, it is difficult to hold positively that the accused was in possession of these articles. The fact of recovery by the accused is compatible with the circumstance of somebody else having placed the articles there and of the accused somehow aciquiring knowledge about their whereabouts and that being so, the fact of discovery cannot be regarded as conclusive proof that the accused was in possession of these articles.'

7. Whenever an accused person gets things recovered from an open field, there are three possibilities always present, viz. (1) that the accused might himself have buried the things in the field, (2) that he might have seen some other person doing so, or (3) that he might have been told by some person who had seen somebody

burying the articles.

It is only when the court can draw the first of these conclusions in a particular case that the court can say that the accused was in possession of the articles found buried in an open piece of land. In Trimbak's case (A) all that the evidence showed was that the accused had pointed out the place from where the stolen articles were recovered. He did not give any explanation as to how he knew that the stolen articles would be found at that particular place. In those circumstances, the learned Judges of the Supreme Court were of the viewthat the fact of recovery by the accused was compatible with the circumstance of somebody elsehaving placed the articles there and of the accusedsomehow acquiring knowledge about their whereabouts.

In other words, the mere recovery of the articles at the instance of an accused person and the absence of any explanation by him as to how he came to know that the articles were there is not sufficient for the court to come to the conclusion that the articles must have been placed in that place by the accused and that he could not have acquired information about the presence of the articles at that place in some other manner.

Therefore, when the recovery takes place at the instance of the accused and he has said nothing as to how he came to have the knowledge that the articles were to be found in the particular open space, there is always the possibility that he mighti have come to know of it somehow or other without having placed the articles there himself. Trimbak's Case (A) therefore, should, in our opinion, be confined in application to that class of cases where a recovery takes place at the instance of the accused, in an open space with which the accused has nothing to do and where he has said nothing In his statement as to how he has come to know of the things being there. It should not, in our opinion, be applied to those cases where the accused has given an explanation as to how he came to know that those things would be found in a particular place and the explanation is that he himself is responsible for burying them there under such & such circumstances.

In such a case, the court has to juage the explanation along with the other evidence of the case and decide whether the explanation can be accepted. By

giving such an explanation, the accused immediately negatives the other two possibilities, namely, that he had seen somebody else burying the things or that he had been told by someone else that a third person had buried those things in that particular place.

In such a case, only one explanation remains, namely, that the accused is responsible for burying the things at that particular place and was thus in possession and the court has then to look to the explanation and the rest of the evidence to decide whether in the circumstances, the accused can be convicted of theft or receiving stolen property.

8. Let us then look at the explanation & the evidence in this case. The prosecution story is that the accused told the police that the stolen property xvould be found buried in that particular Nohra, took the police there and took out the stolen, property from under the ground. The accused admits that the stolen property was put under-ground at that place at his instance by Maidhan and that he took the police to that place and took it out from underground. His defence is not that he was not in possession of this property.

His case is that the property was his and he had placed it at that spot and then taken tt out in order to please the police and save himself from being murdered or if that is going too far, being tortured by the police. He has also claimed that the property belongs to him. The Magistrate has not found that the property belongs to the accused, but he has found that he could hot come to the conclusion that it belonged to Shivkaran and his daughter and had been stolen. The main question, therefore, that has to be decided in this appeal is riot about possession, for, the accused admits that the ornaments recovered were in his possession. His case is that they were his and, therefore, he had not committed any theft.

9-11. Let us look now into the evidence for ownership of the ornaments recovered. (After discussing the evidence, the judgment proceeded). We have therefore no hesitation in coming to the conclusion that the story that the ornaments belonged, to the accused and had been buried there in order to save his life from the police is false. It follows therefore, that the evidence for the prosecution is true and the ornaments recovered were the property of Shivkaran and members of his family

and were stolen on 29-9-1952 and were in the possession of the accused thereafter and were recovered at his instance. As for the money, it was found in the box.. Considering that the box belonged to Shivkaran and was taken away, whatever was found inside it must be deemed to be the property of Shivkaran.

In this state of the evidence, we are of opinion that We can safely draw the presumption provided under Section 114 of the Indian Evidence Act, Illustration (a) and hold that the accused is the thief. There is evidence of lurking-house trespass in this case and, therefore, we are of opinion that the accused is, in the circumstances, guilty under Section 454 of the Indian Penal Code.

12. We, therefore, allow the appeal set asidethe order of acquittal passed by the Magistrate,find the accused guilty under Section 454 of the I. P. C.and sentence him to one year's rigorous imprisonment. The District Magistrate, Chum, will takesteps to arrest him and send him to jail. We mayadd that the accused was present in this Court on9-9-1954 when this case was last heard andshould have been present to-day. He has, however,not turned up to-day and the Magistrate will alsotake steps to see that the bond is forfeited provided the terms of it justify it. We did not permithim to absent himself.