

Girdhari and ors. Vs. State

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Court : Rajasthan

Decided On : Jun-18-1958

Reported in : AIR1959Raj289; 1959CriLJ1475

Judge : K.K. Sharma, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 379; Code of Civil Procedure (CPC) - Order 21, Rule 58

Appeal No. : Criminal Revn. No. 40 and Criminal Jail Revn. No. 48 of 1958

Appellant : Girdhari and ors.

Respondent : State

Advocate for Def. : B.C. Chatterjee, Asst. Govt. Adv.

Advocate for Pet/Ap. : R.C. Sharma, Adv.

Disposition : Applications allowed

Judgement :

ORDER

K.K. Sharma, J.

1. These are two applications for revision one from Jail by Girdhari and the other by the three applicants through their counsel, against their conviction under

Section 379 and a sentence of six months rigorous imprisonment and a fine of Rs. 20/-each by the learned Sub Divisional Magistrate, Dausa. As they arise out of the same judgment, they are being disposed of by one judgment. The three applicants went in appeal to the Court of the Session, Jaipur District, but it was dismissed by the learned Additional Sessions Judge. Jaipur District, by the judgment dated 4-2-1958.

2. According to the prosecution, there was a decree of Chanda Koli against Bhura Koli of village Pilwa, for the sum of Rs. 433-2-0 in the Court of Munsiff Dausa. The decree-holder applied for execution and a warrant of attachment was issued for the attachment of moveable property by the execution Court. This warrant of attachment is Ex. P. 1 on the record of the case and is dated 1-10-1955. The Nazir of the Munsiff's Court Shri Mahadeo Prasad (P.W. 1) along with two Court peons, namely Wazir Khan P.W. 3 and Kalyana in the company of the decree-holder Chanda went to the spot and attached two bullocks, two buffaloes, one calf, one buffalo calf and one cow as per attachment memo., (Ex. P. 2) dated 8-10-1955.

The prosecution case is that after the attachment, the Nazir called upon the applicants to execute a supurdnama in respect of the attached property but they refused to execute any. On the other hand, they untied the attached cattle and drove them towards river. The Nazir lodged a report at the Police Outpost Santhal on 8-10-1955 and it is Ex. P. 3, on the record. He also reported the matter to the Munsiff. The case was challaned under Section 379, I. P. C. by the police, Dausa, against the three applicants as well as two women Mst. Naraini and Mst. Bhaga in the Court of the Sub Divisional Magistrate, Dausa.

3. The prosecution examined Mahadeo Prasad Nazir, hereinafter to be referred to as the Nazir and the Court peon Wazir Khan and the decree-holder Chanda, besides a few other witnesses of whom Nanga came forward as one of the eye-witnesses. All the accused denied the charge. They pleaded that they were not present at the time of attachment, nor did they untie the cattle in question, Learned trial Magistrate was not satisfied that the offence was brought home to the two women Mst. Bhaga and Mst. Naraini but he found the three applicants guilty of an offence under Section 379, I.P.C. and sentenced them, as stated above.

4. I have heard Shri R. C. Sharma on behalf of the applicants and Shri B. C. Chatterjee on behalf of the State.

5. It has been argued by Shri Sharma that from the questions which were put to the applicants under Section 342, Cr. P. C. it would be clear that the Magistrate himself took the attached property to be the property of the accused. Under these circumstances, even if the accused untied the cattle in question and drove them away, they would not be guilty of an offence under Section 379, I. P. C. It was argued that for an offence under Section 379, I.P.C. it is necessary that movable property should be taken out of possession of any person without his consent with dishonest intention.

It was argued that property cannot be said to have been taken with dishonest intention unless the intention is to cause wrongful gain to one person, or wrongful loss to another. It was argued that there could be no intention of causing wrongful gain to any person, or wrongful loss to any other when the property alleged to have been attached, was the property of the accused themselves. It was argued that under the circumstances no offence under Section 379, I.P.C. was made out against the applicants. Learned counsel has relied upon a ruling of Lahore High Court in the case of *Jahana v. Emperor*, AIR 1941 Lah 217 and that of the Sind Judicial Commissioner's Court in the case of *Lunidomal v. Emperor*, AIR 1915 Sind 25 (1). In both these cases, it was held that:

'Where in execution of decree against certain person, property belonging to another person is being wrongfully taken away by the bailiff and the latter and his associates take back that property, this is not an offence under Section 379.'

6. On behalf of the State, it was argued by Shri B. C. Chatterjee that there was evidence on the record that the property belonged to Bhura judgment-debtor and that it is only by mistake that the learned trial Magistrate has recorded in his questions under Section 342, I. P. C. that the property in question was the property of the accused. It was argued that the accused had no right to remove the property nor to save it from being taken away by the bailiff after the attachment.

7. I have considered the arguments of both the learned counsel.

8. There is no doubt that there is some evidence on behalf of the prosecution to show that the attached property belong to Bhura, but the very evidence shows that the accused protested at the time of the attachment that the property belonged to them. If the evidence which showed that the property belonged to Bhura was prima facie believed by the learned Magistrate, the question which he ought to have put under Section 342, Cr. P. C. should have been that the property in question was that of Bhura.

Instead, the learned Magistrate said in one of the questions under Section 342, Cr. P. C. that the property which was attached, was the property of the accused. This snows that prima facie the Magistrate took it that although the property was that of the accused, yet they committed an offence under Section 379, I.P.C. by their act of the removal of that property, after the attachment. Learned counsel for the State argued that the accused have nowhere said in their statement under Section 342, Cr. P. C. that the property was theirs. It was not necessary when in the very question it has been said that the property was that of the accused.

It was also unnecessary for the accused, in the circumstances of the case, to produce any defence evidence that the property was theirs. However, they produced two witnesses and they have stated that Bhura judgment-debtor had no cattle of his own. It is no doubt true that the proper course for the accused would have been to file objection under Order XXI, Rule 58 C.P.C. in the execution Court but simply because they did not do it and rescued their own property, it cannot be said that they acted dishonestly. With respect I agree with the view taken by the Lahore High Court and the Sind Judicial Commissioner's Court in the two decisions referred to above.

9. It may be that the accused might have committed some other offence but they were not prosecuted for any offence other than the one under Section 379, I.P.C. Under the circumstances, their conviction under S, 379. I.P.C. cannot be upheld.

10. Both the applications for revision are allowed and the conviction and the sentence of the applicants under Section 379, I.P.C. are set aside. They are on bail and need not surrender to it under the circumstances of the case. Fine, if paid, shall berefunded to them.

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