

Gurnam Singh Vs. State

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Court : Rajasthan

Decided On : Apr-24-1972

Reported in : 1972CriLJ1688; 1972()WLN303

Judge : L.S. Mehta, J.

Appellant : Gurnam Singh

Respondent : State

Judgement :

ORDER

L.S. Mehta, J.

1. The prosecution case, in brief, is that burglary was committed in the house of P. W. I Lalchand. resident of village 6E District Ganganagar. during the night intervening August 16 and 17 1969. Lalchand was sleeping outside the main gate of his house during the night and when he got up in the morning at about 4. he to his surprise found the lock of his box broken. He also saw southern wall of his house broken. The following articles were missing from his receptacle:

1. One Karla (silver).
2. One pair of Boozli Patti (gold).
3. One pair of Paijeb (silver).

4. Five gold coins (Mohars).
5. Three rings (gold).
6. One pair of Surlia Patti (gold).
7. One nose pin (gold).
8. Rs. 105/- in cash, and
9. Cloth of two designs (about 11 metres).

Of the above items. Nos. 1 and 2 belonged to his wife and Nos. 3 to 7 were owned by his daughter Mst. Vidya P. W. 2. On receipt of the first information report (Ex. P. 1). submitted by Lal Chand Sadar Police. Ganganagar. registered case under Sections 457 and 380. I. P.C. In the course of investigation, Gurnam Singh, who had been arrested in some other case, informed the police that he had given three articles viz. three gold Mohars. pair of 'Karles' and 'Paijeb' to Ami Chand Sunar of village Gidarwali. The information was reduced to writing and is marked Ex. P. 9. Gurnam Singh took the police to Ami Chand. On interrogation Ami Chand stated that he had sold the three items to certain Sunars of Abohar. Thereafter Ami Chand was also arrested by the police. The police recovered gold Mohars from the possession of Chami Ram. P. W. 3 under memo Ex. P. 4 at the instance of Ami Chand. It recovered 'Karlas' and 'Paijeb' from the possession of P. W. 4 Devi Das under memo Ex. P. 5.

After necessary investigation the police presented a challan against Gurnam Singh and Ami Chand to the Court of Munsiff-Magistrate. Ganganagar. Under Sections 457/380 and 411. I. P.C. respectively. Learned Munsiff-Magistrate framed charges against the accused under the aforesaid sections of the Indian Penal Code, to which they pleaded not guilty. The prosecution examined eight witnesses. Both the accused in their statements recorded under Section 342. Cr P. C denied the prosecution allegations. They produced no evidence in their defence. The trial Court, by its judgment. dated 15th July, 1971. convicted Gurnam Singh under Section 380. I. P.C. and sentenced him to undergo one year's rigorous imprisonment and to pay a fine of Rs. 500/- in default of payment of which to

suffer further rigorous imprisonment for three months. Accused Ami Chand was convicted under Section 411. I. P.C. and sentenced to six month's rigorous imprisonment. Against that verdict Gurnam Singh filed an appeal in the Court of Sessions Judge, Ganganagar. but the same was dismissed on October 6. 1971. Hence this revision.

2. The contention of learned Counsel for the petitioner is that the only evidence against Gurnam Singh is the information which he is alleged to have given to the police regarding the availability of gold Mohars pair of 'Karlas and Paijeb'. This information is marked Ex. P.9. The articles have been recovered from the possession of Ghasi Ram. P. W. 3 and Devi Das. P. W. 4 on the information (Ex. P. 10) and at the instance of accused Ami Chand. The information contained in Ex. P, 9 alleged to have been given by Gurnam Singh has no direct bearing with the fact of the recovery of the stolen property and, therefore, it could not have been used in evidence against Gurnam Singh.

3. Although the interpretation of Section 27. Evidence Act. has now been held to allow the admissibility of such statement as 'I will produce a knife concealed, in the roof of my house' on the authority of Kottaya v. Empror AIR 1947 PC 67 : 48 Cri LJ 533 as it leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge and if the knife is proved to have been used in the commission of the offence, the fact discovered is relevant. But this doctrine has never been extended to include statements concerning the source from which an article recovered was obtained. No statement except the last leading to the actual discovery of property is admissible. If the police were allowed to prove that A stated that he handed over the property to B and B stated that he handed it on to C and C to D and D to E and recovery was made from E all of them being accused, there is no guarantee that any statement except the one made by E is true.

4. As long ago as 1875 it was laid down in the Queen v. R.C. Chung (1875) 24 Suth W. R. (Cri) 36. that when a fact is discovered in consequence of information received from one of several persons charged with an offence and when others give like information, the fact should not be treated as discovered from the

information of them all. This salutary principle still remains unchallenged.

5. In *Queen-Empress v. Commr. Sahib* (1889) ILR 12 Mad 153. it has been observed by a Division Bench of the Madras High Court that the test of the admissibility under Section 27 of the Evidence Act, of information received from an accused person in the custody of a police officer, whether amounting to a confession or not is: 'was the fact discovered by reason of the information, and how much of the information was the immediate cause of the fact discovered, and as such a relevant fact?' In answering the statement made by the prisoner that he deposited the articles produced with the witness to deliver them up on demand was the proximate cause of their discovery and was admissible in evidence.

In another Full Bench decision of the Lahore High Court in *Sukhan v. The Crown* ILR (1929) 9 Lah 283 : AIR 1929 Lah 344 : 30 Cri LJ 414 (FB), it has been held that the statement of the accused that he had pledged with Alla Din the 'Karas' subsequently recovered from the latter is admissible under Section 27 of the Evidence Act. but the rest of the incriminating statement could not be received in evidence. In both the cases the persons from whom the property was recovered gave it up without demur and were innocent recipients of the same. The statement of the deponent was admitted. The principle enunciated might have been availed in respect of the admissibility of the statement made by Gurnam Singh if the case of the prosecution was that Ami Chand had received the property innocently and had he been called as a witness. Ami Chand has denied in his statement that he received the property. The Madras and the Lahore cases, therefore, are not applicable to this case.

As has been observed by the Nagpur High Court in *Maganlal Bagdi v. Emperor* AIR 1934 Nag 71 : 35 Cri LJ 1097 the correct interpretation of Section 27 of the Evidence Act, is that only the statement which has got a direct bearing on the recovery of the property is admissible in evidence. Any statement made by another accused with regard to the recovery of the stolen property which has no direct bearing although it may have had an indirect bearing in giving the police a fresh starting point for investigation, is not admissible in evidence. The reason is obvious. The discovery in such a case is not a natural consequence of the

statements made by the accused other than the one who made a final statement. The discovery lends assurance to the correctness of the last statement. In the light of the foregoing discussion, the information furnished by Gurnam Singh regarding the availability of the alleged stolen property (Ex. P. 9) is not admissible in evidence against him and. therefore, the trial Court as also the appellate Court fell into error in convicting Gurnam Singh on the basis of his alleged information.

6. In the result. I accent the revision-petition submitted by Gurnam Singh and acquit him. He shall be released forthwith, if not required in any other case.

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