

Bhanwarlal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-19-1994

Reported in : 1995CriLJ625

Judge : R.R. Yadav, J.

Acts : Evidence Act - Sections 27 and 114; ; Indian Penal Code (IPC) - Sections 380, 411, 414 and 457

Appeal No. : Criminal Revn. No. 55 of 1985

Appellant : Bhanwarlal

Respondent : State of Rajasthan

Advocate for Def. : H.R. Panwar, Public Prosecutor,; K.R. Bishnoi and M.M. Singhvi, Adv.

Advocate for Pet/Ap. : Moramkam Gaur, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R.R. Yadav, J.

1. The instant revision is preferred against the judgment dated 29-1-85 passed by learned Sessions Judge, Jalore in Cr. Appeal No. 85/84 upholding the conviction and sentence awarded by learned Munsif and Judicial Magistrate First Class, Jalore dated 17-10-84 in Cr. Original Case No. 460/83 except with the modification that in place of running both the sentences passed under Sections 411 and 414 IPC conjunctively both the sentences were to run concurrently. The accused Bhanwarlal has been convicted and sentenced under Section 411 IPC for one year R.I. together with a fine of Rs. 500/- and in default to further undergo three months' R.I. The petitioner has also been convicted and sentenced under Section 414 IPC for a period of one year R.I. as stated above. Both the sentences were directed to run concurrently.

2. The case of the prosecution briefly stated are that in consequence of a written report of Shri Sakal Chand PW-34 at the Police Station Ahore on 11-2-82 at 5 p.m. a case under Section 457 IPC was registered and later on the offence under Sections 380 and 411 IPC were added. In his report Ex. P/62 it is alleged by Sakal Chand that he had gone away out of State (Deshawar) after locking his house at Godan village. From Deshawar, he came to Jodhpur in connection with marriage of his brother-in-law which was to take place on 26-2-82 and from Jodhpur he comes to Godan to inspect his house and then he saw that the locks of doors were lying broken. In the report it was stated that the list of stolen articles will be submitted later on. The complainant Sakal Chand PW-34 submitted a list of stolen articles on 12-2-1982.

3. On the basis of aforesaid written report lodged by PW-34 Sakal Chand, the Investigating Officer arrived at the place of incident and prepared various memos and also took chance prints etc. The Investigating Officer having a suspicion against Babu Singh co-accused arrested him on 26-2-1982. The prosecution case further proceeded that in consequence of the information of arrested accused Babu Singh part of stolen property was recovered. The petitioner was arrested on 18-2-82. It is said that the Investigating Officer recovered and seized two silver ingots from Kailash Chand in consequence of the information of the petitioner and further made recoveries on 23-2-82 and 27-2-82 in consequence of subsequent information dated 26-2-82 and 27-2-82.

4. After completion of investigation, a challan was filed in the court of Munsif and Judicial Magistrate, Jalore against the petitioner and co-accused Babu Singh under Sections 457, 380 and 414 IPC. The learned Magistrate on the basis of police papers submitted by the police framed charges against both the accused persons. Both the accused persons pleaded not guilty and claimed trial.

5. In support of the prosecution case the prosecution agency examined as many as 36 witnesses and produced 73 documents i.e. Exhibit P/1 to Ex. P/73.

6. After hearing the learned Public Prosecutor and the learned Counsel for the accused, the learned Munsif and Judicial Magistrate 1st Class, Jalore vide his judgment dated 17-10-84 convicted and sentenced both the accused persons as aforesaid.

7. Aggrieved against the aforesaid conviction and sentence awarded by the learned Munsif and Judicial Magistrate, Jalore dated 17-10-84 the co-accused Babi Singh and the petitioner preferred an appeal before the learned District and Sessions Judge, Jalore who after hearing learned Counsel for the petitioner as well as the learned Public Prosecutor and the learned Counsel appearing on behalf of co-accused Babu Singh maintained the conviction and sentences awarded by the learned Munsif and Judicial Magistrate, 1st Class, Jalore with the modification that instead of both the sentences running conjunctively against both the accused persons same would run concurrently as mentioned above.

8. It is pertinent to mention here that the co-accused Babu Singh has submitted to the conviction and sentences awarded by both the courts below but aggrieved against the conviction and sentences the petitioner Banwarlal has preferred the instant revision before this Court.

9. I have heard learned Counsel for the petitioner Shri Niranjana Gaur as well as learned Public Prosecutor Shri H.R. Panwar assisted by Shri K.R. Bishnoi, learned Counsel for the complainant at length and have gone through the evidence on record.

10. The learned Counsel for the petitioner strenuously argued before me firstly that the learned courts below have not properly appreciated the oral and documentary evidence on record and secondly according to the learned Counsel both the courts below had fallen into an error in ignoring the condition necessary to bring Section 27 of the Indian Evidence Act into operation. According to the learned Counsel for the petitioner the condition necessary to bring Section 27 into operation is that the discovery of fact must be deposed to and thereupon so much of the information as relate distinctly to the facts thereby discovered may be proved. According to him Section 27 of the Indian Evidence Act is based on the view that if a fact is actually discovered in consequence of information given by some accused afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence. But the extent of information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. In support of his aforesaid contention the learned Counsel for the petitioner placed reliance on the case of *Kottaya v. Emperor*, reported in AIR 1947 PC 67: (1947 (48) Cri LJ 533). He further placed reliance on the case of *Mohd. Inayatullah v. State of Maharashtra* rendered by Apex court reported in 1976 Cri LJ 481: (AIR 1976 SC 483). Learned Counsel for the petitioner further placed reliance on the case of *Bhanda Garh v. State of Assam*, reported in 1984 Cri LJ 217, rendered by Gauhati High Court. Lastly the learned Counsel for the petitioner urged before me that there is no evidence on record to connect the petitioner with the charge framed under Sections 411 and 414 IPC.

11. The learned Public Prosecutor refuted the aforesaid arguments advanced on behalf of the petitioner and urged before me that it is not the practice of this Court to reappreciate the evidence for the purpose of examining whether the finding of fact concurrently arrived is correct or not. According to the learned Public Prosecutor it is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice only then this Court could interfere with such finding of fact. According to learned P.P. in the present case nothing has been brought to the notice of this Court that some manifest illegality or grave and serious miscarriage is meted out to the petitioner, therefore, reappraisal of evidence in the present case is not called for. In support of his aforesaid contention the learned Public Prosecutor has placed reliance on the decision

rendered by the apex court in the case of Duli Change v. Delhi Administration reported in 1976 ACC CJ 125: (1975 Cri LJ 1732). Secondly according to the learned Public Prosecutor for convicting an accused under Section 411 IPC it is sufficient to prove that he has knowledge that the articles were stolen. According to him a presumption could be drawn under Section 114(a) of the Indian Evidence Act that the accused-petitioner knew that the articles were stolen. In support of his aforesaid contention the learned Public Prosecutor has placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Achyut Das v. State of Assam reported in 1994 Cri LJ 1119: (AIR 1994 SC 968). Learned Public Prosecutor had also invited my attention towards a clinching circumstance that about 9kg. of silver has been purchased by the accused petitioner from co-accused Babu Singh only for a paltry amount of Rs. 2900/- and according to the market rate of today the value of 9kg. silver purchased by the accused petitioner would be about Rupees 90,000/- and on the date of purchase, it must be approximately Rs: 45,000/-. According to him on the information of the accused Babu Singh (Ex. P/69 dated 17-2-82) who had submitted to the conviction and sentence awarded to him by the learned Sessions Judge, accused petitioner was arrested vide Ex. P/11 on 18-2-82 and on his information several recoveries were made by the Investigating Officer of the silver ingots during the course of investigation.

12. Now I propose to discuss the argument raised at the Bar in Seriatim.

13. A close scrutiny of the judgments rendered by both the learned courts below reveal that the finding of guilt recorded against the accused petitioner is based on the proper appreciation of the oral and documentary evidence on record. Both the courts below have recorded a concurrent finding of guilt against the accused petitioner which is based on cogent and convincing reasons with which I am in full agreement. In fact it is not the practice of this Court to reappraise the evidence for purpose of examining whether the finding of fact concurrently arrived is correct or not. It is only in rare and exceptional cases where there is some manifest, illegality or grave and serious miscarriage of justice only then this Court could interfere with such finding of fact. Nothing has been brought to my notice by the learned Counsel for the petitioner that any manifest, illegality or grave and serious

miscarriage of justice in the case in hand has occasioned to him which requires interference with such concurrent finding of guilt recorded by both the courts below.

14. My aforesaid view is buttressed by a decision rendered by the Apex court in the case of Duli Chand, (1975 Cri LJ 1732) (Supra) on which the learned Public Prosecutor has placed reliance.

15. In my humble opinion when 9 kg. silver was sold by the co.-accused Babu Singh, the accused petitioner who purchased the 9 kg. silver from Babu Singh for a paltry sum of Rs. 2900/- was expected to satisfy himself by making proper inquiries that it is not a suspected silver. In view of the aforesaid circumstances the accused petitioner cannot be said to be an innocent purchaser of 9 kg. silver for paltry sum of Rs. 2900/- only.

16. In my considered opinion the accused petitioner in the present case cannot be said to be a bona fide purchaser of 9 kg. silver from co-accused Babu Singh for a paltry sum of Rupees 2900/-, the market value of which on the date of purchase was approximately about Rs. 45,000/-. In view of the aforesaid facts and circumstances the finding of guilt recorded by both the courts below in this regard do not suffer with any infirmity. The finding of guilt recorded by both the courts below are based on analytical discussion of oral and documentary evidence on record and there is no manifest illegality or grave and serious miscarriage of justice which may require indulgence of this Court under its revisional jurisdiction.

17. As regards the second contention raised on behalf of the accused-petitioner by Shri Niranjana Gaur there is no quarrel about the proposition of law propounded by their Lordships of Privy Council in the case of Kottaya's case (1947 (48) Cri LJ 533) (Supra) which still hold water and reaffirm by the Apex court in the case of Mohd. Inayatullah, (1976 Cri LJ 481) (Supra).

18. It is well to remember that the interpretation and scope of Section 27 Indian Evidence Act has been the subject of several authoritative pronouncement about its application to cases is not always free from difficulty. It will, therefore, be worthwhile at the outset to have a short swift glance at the Section 27 of the Indian Evidence Act which is quoted below:--

Section 27.-- Provided that, when any fact is deposited to have been discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

19. From the close scrutiny of Section 27 of the Indian Evidence Act quoted above it reveals that for applicability of the said Section first, condition necessary for bringing Section 27 into operation is the discovery of fact in consequence of the information received from the person accused of an offence. The second is that discovery of such fact must be deposited to. The third is that at the time of receipt of the information the accused must be in police custody. Last and most important condition is that only so much of information as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded.

20. In a subsequent decision rendered in the case of *Earabhadrapa v. State of Karnataka* rendered by the Apex court reported in AIR 1983 SC 446: (1983 Cri LJ 846), it is ruled that for the applicability of Section 27, two conditions are prerequisite viz. (i) information must be such as has caused discovery of the fact, and (ii) the information must relate distinctly to the fact discovered. According to the aforesaid decision of the Apex court under Section 27 only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word 'fact' means some concert or material fact to which the information directly relates.

21. Applying the aforesaid test I examine the judgment of both the courts below and found that on the information of the accused-petitioner recoveries of silver ingots were made from Kalu Ram, Kailash Chand, Dayal Das and Devi Lal and certain recoveries have also been made from the house of accused petitioner out of which one of them was a silver Dibbi over which the name of Sakal Chand, first informant, was written. Both the courts below have believed the recoveries made from the aforesaid persons on the information of the accused-petitioner. In my humble opinion these recoveries of silver ingots have been made possible only on the information of the accused petitioner. The accused petitioner has examined his

father Ranamal as DW-1 in order to disprove the recovery made at his residence. Both the courts below after giving cogent and convincing reasons have rightly disbelieved the statement of DW-1 Ranamal. Both the courts below have not committed any manifest error in relying the recoveries made from different persons of silver ingots at the instance of accused petitioner.

22. It is pertinent to mention that while accused-petitioner purchased 9 kg. of silver from Babu Singh, co-accused, he did not make an entry in his Bahi although it has come on the record that he is doing the business of gold and silver ornaments. It is also pertinent to mention that all the purchasers except one i.e. Kailash Chand Sarraf had also not made any entries in their Bahi. The aforesaid conduct of the accused petitioner who was doing the business of gold and silver ornaments not making an entry of 9 kg. silver purchased from co-accused Babu Singh for a paltry sum of Rs. 2900/- only and the subsequent purchasers from accused petitioner named above except Kailash Chand Sarraf had also not made any entry in their Bahi although all of them were doing the business of gold and silver ornaments and in ordinary course of business they used to maintain record of gold and silver purchased or sold.

23. It is settled principle of law that a fact is taken to be proved when after considering the matter and natural course of human conduct the court believes to it to exist or considers its existence so probable which a prudent mind ought under the circumstances of the particular case to act upon the supposition that it exists. In the present case co-accused Babu Singh had submitted to the finding of guilt recorded by both the courts below. It was co-accused Babu Singh who had committed theft in the house of Sakal Chand and in a house adjoining to the house of the first informant Sakal Chand. In the natural course of human conduct a thief always required a goldsmith to dispose of stolen silver and golden ornaments.

24. In the present case I am of the considered opinion that the accused-petitioner has purchased 9 kg. silver from co-accused Babu Singh for a paltry sum of Rs. 2900/- only deliberately knowing it to be stolen silver. The recovery at his residence out of which one was silver 'dibbi' over which the name of Sakal Chand was written was found mixed in the ornaments of the wife of accused-petitioner.

25. The aforesaid recoveries made on the information of accused petitioner are clinching evidences against the accused petitioner which throw a flood of light about the purchase of 9 kg. of silver by the accused petitioner from co-accused Babu Singh for a paltry sum of Rs. 2900/-only.

26. In view of the aforesaid discussion, the accused-petitioner cannot said to be an innocent purchaser. It is apparent on the face of record that he did not make any enquiry from co-accused Babu Singh at the time of purchase of 9 kg. silver from him who was admittedly not doing any business of gold and silver ornaments nor he was a goldsmith. In such situation if co-accused Babu Singh made an attempt to sale 9 kg. of silver to him he was expected to satisfy himself by making proper enquiries from the co-accused that it is not a suspected article.

27. In the result of the aforesaid discussion the instant revision lacks merit and as such hereby dismissed and the finding of guilt recorded by both the courts below and sentence awarded by the learned Sessions Judge, Jalore vide his judgment dated 29-1-85 is hereby affirmed. The accused-petitioner Bhanwarlal is on bail, his bail bonds are hereby cancelled. The learned Munsif and Judicial Magistrate 1st Class, Jalore is hereby directed to issue non-bailable warrant against the accused-petitioner Bhanwarlal to ensure his arrest to serve out remaining sentences. The record of both the courts below may be sent back forthwith.