

The Public Prosecutor Vs. Pakkiriswami and anr.

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Court : Chennai

Decided On : Aug-22-1929

Reported in : 122Ind.Cas.648; (1929)57MLJ548

Appellant : The Public Prosecutor

Respondent : Pakkiriswami and anr.

Judgement :

Curgenven, J.

1. This is an appeal against the acquittal of two accused persons who were charged under Sections 457 and 380, I..P.C., with housebreaking by night and theft in a building before the Second Class Magistrate of Tiruvarur. Efforts to obtain the presence of the 2nd accused have so far failed, so that I take the case only as against the 1st accused.

2. There is no question that the house of the first prosecution witness was broken into on the 19th August, 1928, and a quantity of property stolen. But there is no direct evidence to connect the present respondent with the theft. He was arrested--on what grounds does not appear--at Negapatam on the 26th August as he was leaving by boat for Singapore, and from there he was taken to the Police Station at Kivalur and the Sub-Inspector, P.W. 5, who effected the arrest says that he obtained a statement from him that same evening with regard to the whereabouts of some of the property. He was kept in the lock-up during that night

and the next morning another witness, the Village Munsif of Kivalur, P.W. 6, spoke to the prisoner and also was the recipient of similar information. The respondent was then taken to the place which he had indicated, which is a tank in Kuthur, the village in which the housebreaking and theft had taken place. The Village Munsif of Kuthur. P.W. 9, was then sent for and, at the Sub-Inspector's suggestion, questioned the respondent and was told about the secreted property. A search based upon the information given was then undertaken and a number of vessels, M.Os. 1 to 9, were recovered from the bed of the tank. These facts were recorded in Ex. A, written at the spot. It is further to be noted that there is correspondence between the description of these articles and certain of the articles mentioned in Ex. 1 on the 22nd August, 1928, by P.W. 1 as amongst the stolen property.

3. That is the whole of the prosecution evidence, and the first point that occurred to me was that it was not legally sufficient for the purpose of convicting the respondent of housebreaking and theft. As authority for that position may be cited *Queen-Empress v. Gobinda* (1895) I.L.R. 17 A. 576 which deals with the case in which an accused person pointed out the place where certain stolen property was concealed. It was a place, as is the tank in the present instance, which was not the peculiar property or within the sole control of the accused, but accessible to the public in general, and as the learned Judges very reasonably remarked. if it is left doubtful whether the accused or some other person concealed the stolen article, or that the accused obtained in some other way information that the stolen property was in the place where it was found,

4. such evidence of itself is not sufficient for a conviction. This case was cited with approval in *Paimullah v. The King-Emperor* (1911) 16 C.W.N. 238 where it was held that evidence of this character was not sufficient to convict an accused even under Section 411, I.P.C. and again in *King-Emperor v. Buta Singh* (1916) 39 I.C. 330 and in *Khushal Singh v. The Crown*. A.I.R. 1923 Lah. 335 Following these decisions, I hold that the prosecution did not establish the respondent's complicity in the offence of housebreaking and theft.

5. I think, however, that apart from this consideration, there are no sufficient reasons for interfering here with the judgment of acquittal. The case depends upon

the credibility of the two Village Magistrates and the Sub-Inspector and necessarily very considerable weight must be attached to the view taken of the oral evidence by the Trial Court. The learned Second Class Magistrate says that the statement elicited from the respondent, "in the nature of things, cannot be voluntary," and further that the evidence of the three witnesses is "stereotyped, looks artificial and is of a doubtful character." As regards the first of these criticisms, it cannot, I think, be contended that a statement, even if extorted or elicited by inducement from a prisoner, will thereby be rendered inadmissible under Section 27 of the Evidence Act, but there cannot be any doubt that its value must be very seriously affected. I have perused with care the depositions of the three witnesses and cannot indeed find any ground for believing them to be false. On the other hand, it would be idle to argue that Village Munsifs are not sometimes amenable to Police influence and in that respect perhaps they cannot be regarded as exceptionally independent witnesses. It must, I think, be only in very exceptional circumstances that a Court dealing with an appeal against an acquittal should reverse that finding by accepting oral evidence which the Trial Court, after enjoying the advantage of hearing the witnesses, has disbelieved. In the present case I do not feel prepared to accept such a responsibility.

6. I accordingly dismiss the appeal.

7. This appeal coming on for orders as against the 2nd accused in the presence of Mr. N.S. Mani for the appellant and the appellant requesting permission to withdraw this appeal as against the 2nd accused the Court made the following

ORDER

8. The appeal against the 2nd accused is not pressed, and is dismissed. Process issued under Sections 87 and 88 of the Code of Criminal Procedure will be withdrawn.

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