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In Re: Abdul Gani Sahib

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Court : Chennai

Decided On : Aug-20-1936

Reported in : 165Ind.Cas.387; (1936)71MLJ536

Appellant : In Re: Abdul Gani Sahib

Judgement :

Pandrang Row, J.

1. This is a jail appeal in which notice has been ordered to issue by my brother Burn, J., on the ground that the sentence appeared to be excessive. The appellant was convicted as a result of the unanimous verdict of the jury to the effect that he was guilty of theft, after a trial conducted before the Sessions Judge of South Arcot. The charge to the jury is vitiated by a defect in the definition of the offence punishable under Section 411, Indian Penal Code. The learned Sessions Judge omitted to tell the jury that it was only a dishonest retention or receipt of stolen property that constituted the offence. He charged the jury in the following terms:

If a person receives or retains stolen property knowing or having reason to believe the same to be stolen, then he is said to commit an offence punishable under Section 411, Indian Penal Code.

2. Vide para. 2 of the charge. In paragraph 8, in dealing with the presumption arising from recent possession of stolen property not accounted for, the same omission to mention the all-important adjective 'dishonest' occurs. A similar

omission is found in paragraph 13 of the charge. This is no doubt a serious defect, but it does not appear to have prejudiced the appellant who was found guilty not of an offence punishable under Section 411, but of theft itself. The case would have been different if the jury's verdict was that the accused was guilty of an offence under Section 411, Indian Penal Code. In other respects, there has been no misdirection in the charge of a material nature, and I see no reason to suppose that the verdict of the jury was not a proper one on the evidence.

3. As regards the question of sentence, the learned Judge does not give any particular reason for imposing a sentence of 6 years' rigorous imprisonment under Section 379 read with Section 75, Indian Penal Code. The prosecution case is that the property stolen in this case was a cow worth about Rs. 50. For an offence of this nature, if committed by a casual offender for the first time, the ordinary sentence would not certainly exceed 6 months' imprisonment. The question is whether an old offender, whose previous conviction was in 1929 and whose previous sentence was 5 years' rigorous imprisonment should now necessarily be given 6 gears' imprisonment. There seems to be an idea prevalent in the minds of some judges that there is a rule that the sentence on an old offender should always be at least a little more severe than the sentence just previous. This so-called rule cannot be supported by any good reason. It may be an excellent rule of thumb, but I do not think, in imposing sentences, such a rule can be safely followed, in the interests of the proper administration of criminal justice. While the sentences imposed on criminals should be adequate to the offence, there is every reason why they should not be excessive. Apart from the injustice to the offender which an excessive sentence entails, such a sentence tends to undermine public confidence in the administration of criminal justice. In the absence of any reasons for imposing a sentence of 6 years' rigorous imprisonment in this case, and in view of the nature and value of the stolen property, I am of opinion that the sentence imposed by the learned Sessions Judge is far too severe. The sentence is therefore reduced to three years' rigorous imprisonment. The Order directing the appellant to give information of his residence and change of residence to the Police for a period of three years after the expiration of the sentence will stand. The conviction is confirmed and the substantive sentence is reduced to three years' rigorous imprisonment.

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