In Re: Samachari and anr.

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SooperKanoon Citation : sooperkanoon.com/785746

Court : Chennai

Decided On : Sep-13-1923

Reported in : (1923)45MLJ728

Appellant : In Re: Samachari and anr.

Judgement :
ORDER

Krishnan, J.

1. In these cases the first three accused in C.C. No. 8 of 1922 on the file of the Taluq Magistrate of Adoni are the petitioners before me. The 4th accused in the case was acquitted by the appellate Court and hence he is not a party to the revision. The four accused were charged under Section 414, I.P.C. on the ground that they voluntarily assisted in concealing and disposing of property, namely a bundle of 233 dressed skins produced before the Court which they, knew or had reason to believe was stolen property by transferring the said property from Gooty to Adoni, then by depositing it in different places and by offering it for sale. Both the lower Courts convicted the accused of the offence charged.

2. The prosecution case is that Messrs Hazee Sheik Meeran Sahib and Co., despatched by rail 16 bales of tanned skins from Dronachalam in Kurnool district to Madras, that one of the bales was found missing, when the train reached Cuddappah on the 1st June, 1922, and that this missing bundle was found in the

Sonavala ginning factory where the 1st accused was offering it for sale. The other accused are said to have assisted in getting these goods from Gooty to Adoni and to have also assisted in getting them sent to various places and to have helped towards their sale.

3. All the appellants pleaded not guilty. To convict an accused under Section 414, I.P.C. it is necessary that the property that is the subject of the charge should be stolen property and further that the accused should have known or had reason to believe that it was stolen property which they were trying to conceal or to make way with. The finding therefore that the property in question is stolen property is an essential finding for a conviction under Section 414. It was argued before the Appellate Magistrate that assuming all the facts alleged by the prosecution to be true, there was no evidence to show that the skins in Court were identical with those contained in the bale which was lost and that they were stolen property. In answer to this argument, the appellate Magistrate relied upon Emperor v. Budhankan (1913) 13 Cr. L.J. 793, which he considered was a sufficient answer to it. That case, as I understand it, only goes to the length of holding that it is not actually necessary to prove in theft what property was stolen or in what manner it was stolen. That no doubt is true on the words of the section. It is not necessary to establish that the property was the subject matter of any particular theft, but nevertheless it must be shown that it was the subject matter of some theft or other. If an accused person thinking that an article, which is in his possession is stolen property tries to conceal that property when as a matter of fact it is not stolen property at all but property honestly come by, I do not think that any offence under Section 414 would be committed, for the very essence of Section 414 is the concealment of stolen property which the accused knew or had reason to believe to be stolen property. That being so, the appellate Magistrate should have come to some definite conclusion as to whether the skins in question were stolen property. I do not mean to say that it is necessary to show actually from where the skins were stolen or that they were identical with the skins lost in transit in the train in this case. The fact that the property dealt with is stolen property may in some instance be inferred indirectly from circumstantial evidence as from the way in which it is dealt with by the party dealing with it; this was done in the Bombay case, Empress v. Rango Timaji I.L.R. (1882) B. 402. But the circumstances must

be such as would justify the conclusion that the property is actually stolen property. In this case the first Court did come to a definite conclusion on the point and held that the skins before the Court were really part of the bales which had been carried from Dronachalam to Madras and also that the theft of these skins while in transit, had been proved. The Appellate Magistrate has not come to any definite conclusion on either of these points; but he simply relies on the case in 13 Criminal Law Journal which, he considers, dispenses with the necessity of his coming to a definite conclusion on the points.

4. As I propose to send the case back to be heard again in appeal, I do not propose to go into the question whether the facts proved with regard to the conduct of these accused with reference to the skins are sufficient in themselves to justify a finding that they were stolen goods. That must be left to the Appellate Magistrate to decide on hearing the appeal again.

5. Then there are one or two other points to which I would like to draw the appellate Magistrate's attention. The evidence as regards the 2nd appellant that there is an entry in the account book of the 3rd appellant going to show that he paid rent on account of the 2nd appellant is not admissible against the 2nd appellant at all. It is an entry that appears in a book kept by the 3rd appellant and it is difficult to see how it is admissible in evidence against the 2nd accused. It will also have to be considered whether the statement in Ex. M could be treated as evidence against the 2nd and 3rd accused. Of course I need not say that the evidence against each of the accused should be separately scrutinised to see whether the offence charged against each one of them is made out against each. I set aside the judgment of the appellate Magistrate except in so far as it acquits the 4th accused, and remand the appeal to be disposed of by a competent Magistrate chosen by the District Magistrate. I am not sending the case back to the same Magistrate who disposed of the appeal as he has already come to certain conclusion which may prejudice the accused at the rehearing.