In Re: Muhammad Ali Shet

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SooperKanoon Citation : sooperkanoon.com/789117

Court : Chennai

Decided On : Oct-21-1908

Reported in : 4Ind.Cas.163

Judge : Sankaran Nair, J.

Appellant : In Re: Muhammad Ali Shet

Judgement :

Sankaran Nair, J.

1. In this case the accused was tried on the following charge:

That you dishonestly received or retained certain copper and brass vessels belonging to Sheikh Mahomed and Sukkur Shet which vessels were stolen property knowing or having reason to believe the same to be stolen property.

2. According to the prosecution the theft from the house of Sheikh Mahomed was on the night of the 17th June, 1907, and the theft in the house of Sukkur Shet was on the night of the 6th July 1907. The Police Sub-Inspector went to the house of the accused on the 9th July, 1907, to conduct a search when he found in a room a pair of scales in which were being weighed some pieces of broken copper vessels and some other copper pieces in a tin. One Khader who has been convicted of the theft of these articles and a servant of the accused (prosecution witness No. 3) were there. The father of the accused who was aged and bedridden was also

there. Sukkur Shet identified the copper pieces as his stolen property. They were seized by the Police, a list was drawn up and signed by Shet and by the accused who had arrived in the meantime. Soon afterwards the Town Inspector of Police arrived and on a search of the house of the accused, 7 bags containing broken copper and brass vessels were found. Sheik Mahomed identified four articles from among the contents of the bags as vessels which had been stolen from his house on the night of 17th June 1907.

3. Now it is quite clear that the receipt of the articles stolen on the 17th June is a distinct offence from the receipt of the articles stolen on the 6th July and it is also not clear that the receivers were the same. The lower Courts do not consider the evidence, if any, that may have been adduced to show that the accused received the articles stolen on the 17th June with any guilty knowledge. The Head Assistant Magistrate only states that the accused was in possession of other articles found to have been stolen, i. e., those identified by prosecution witness No. 1, and the Sessions Judge states that he had similarly received the property stolen from Sheikh Mahomed. When a property is found in a house in the possession of more than one person mere discovery of any stolen property in that house is not in itself sufficient to prove that the possession was of any one of those persons. It is not shown that the door of the room in which these articles were found was locked and that the accused had the key of that room and no evidence has been referred to by either of the lower Courts to prove either the possession of the accused or of the broken copper and brass vessels. As to the articles stolen on the 6th July the evidence of the accused's possession and guilt is solely that of the prosecution witness No. 3. His statement that Khader told him that the accused had settled the price with him is inadmissible as Khader is not a witness in the case and this is the evidence merely relied on by the Courts below. If Khader had sworn to it, then it might be admissible to corroborate Khader's evidence. Excluding that, the only evidence of Prosecution Witness No. 3 against the accused is that the accused had asked the witness to receive certain articles that Khader might bring him. There is, of course, no presumption that the accused must have known that Khader would bring only stolen articles or that he would bring these articles. There is no other evidence to show that the accused had any reason to suspect that they were the articles to be brought by Khader. There is accordingly no evidence

against him, of receiving stolen property. It is to be observed that if the articles themselves looked suspicious, then the evidence of the 3rd witness for the prosecution who must have known their nature must be received with caution and it is probable his statement implicating the accused was made to exculpate himself.

4. In these circumstances, I set aside the conviction and direct that the accused be set at liberty and discharged from custody, and fine, if levied, be refunded.