

In Re: Ramudu Aiyar

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SooperKanoon Citation : sooperkanoon.com/789329

Court : Chennai

Decided On : Dec-04-1922

Reported in : AIR1923Mad365; (1923)44MLJ243

Appellant : In Re: Ramudu Aiyar

Judgement :

Krishnan, J.

1. This is an appeal against the conviction, of the Chief Presidency Magistrate, of the accused under Section 411, I.P.C. The accused was sentenced to one year's rigorous imprisonment. The stolen property is said to be a particular kind of gold thread which has never been sold before in the Madras market and which is easily identifiable. It would seem that about Rs. 40,000 worth of gold thread including this special kind of thread was stolen from the Port Trust premises sometime in April 1922 from certain boxes which had been imported from Europe and kept there. The theft was discovered in April but the stolen property was not traced till the beginning of June. On some clues which the police obtained they found that this particular kind of gold thread which is the subject matter of this case was purchased by certain Salem merchants from the accused's brother and his gumasta, and in consequence the accused was arrested and charged with receiving stolen property with reference to this gold thread.

2. Mr. Grant appearing for the accused does not dispute that the gold thread in question was really stolen property. The only question which is argued is whether the accused received this stolen property 'knowing or having reason to believe the same to be stolen property '. It is of the essence of an offence under Section 411, I.P.C. to show that the person who was in possession of the stolen property knew or had reason to believe that it was stolen property. The stolen property was traced to the accused's possession after nearly two months at least, so that the presumption under Section 114 of the Evidence Act can hardly be applied, in this case. Then the question is whether there is evidence in this case sufficient to bring home to the accused the fact that he knew or had reason to believe the property to be stolen property. After hearing the evidence discussed before me, I have come to the conclusion that that evidence is not sufficient to establish the guilty knowledge of the accused, though it throws a very great deal of suspicion upon him. The accused says that he obtained the gold thread which he had from one Guruvappa Chetti, and no attempt has been made to prove that this is fake. Guruvappa Chetti was a co-accused with the accused in this case to start with, but subsequently his case was treated as a separate one and the accused was tried only along with his brother who has been discharged. The Magistrate uses the statement made by Guruvappa chetti as 3rd accused when he was co-accused with the present accused for saying that Guruvappa chetti never gave these goods to the 1st accused. I do not think this was a proper use of his statement at all. As he was taken out of the dock he should have been examined as a witness if the Magistrate intended to rely upon his statement as evidence against the 1st accused. Even if that had been done, it would be very difficult to say that his evidence would have carried much weight, being himself accused of having been the thief. However as the record stands there is no evidence whatever to show that the accused's statement that he bought the goods from Guruvappa Chetti and that he paid Rs. 4,980 for 83 marcs of this gold thread is not true. We cannot assume without evidence that the accused's statement is false. Therefore it is the duty of the prosecution to prove it is false if they propose to rely on its falsehood as against the accused. It is true that the accused's attempt to prove that he did actually give Rs. 4,980-0-0 by producing his account book has not been very successful. I am not prepared to rely upon what appears in his account in his

favour. The entry in his book is, as the Magistrate observes, very suspicious for the reasons he has stated. But it is one thing to find the entry suspicious and to refuse to act upon it and another thing to find the falsehood of what is sought to be proved. Assuming that it has not been proved that his statement that he got the goods from Guruvappa Chetti and that he paid Rs. 4,980 for the goods is not true, the question is whether there is evidence to show that he had reason to believe that Guruvappa Chetti could not have come by the goods honestly or that he should have suspected the bona fides of Guruvappa Chetti in being in possession of these goods and selling them to him. Now the price he has paid, the Crown Prosecutor contends, is such a low price that an adverse inference can be drawn against the accused from that fact alone. I am quite unable to agree with that argument, because the price works out at Rs. 60-0-0 a marc and the evidence of the prosecution second witness seems to show that that was not at all an unfair price for the goods in the market. No doubt he says that at the time the goods were imported the price including the duty for importation to British India was Rs. 71-0-0, but he admits that subsequently the price fell. Apparently at the time of the purchase by the accused it was not more than Rs. 45-0-0 without the duty and including the duty which is 30 percent, it was somewhere about Rs. 60. No adverse inference therefore can be drawn from the amount of the purchase money said to have been paid. It is also argued by the Crown Prosecutor that the two circumstances, namely, that the accused himself was not a dealer in gold thread and that he purchased this gold thread from a person who was not a dealer in gold thread, are very strong evidence against the accused. I certainly agree that those circumstances are grounds of great suspicion against the accused but I am not prepared to hold on those circumstances alone that the accused had any suspicion or guilty knowledge of the goods being stolen property. Many people in Madras do sometimes speculate in goods in which they do not trade, and to take that as evidence of guilty knowledge would be quite unreasonable. There is no proof in this case that the accused knew that Guruvappa Chetti himself was, as the Crown Prosecutor contends, a firewood seller. He seems to have been a firewood seller a long time prior to this transaction and latterly according to the evidence he had become a seller of gems, and it is not impossible that such a man may on an occasion trade in gold lace. However the circumstances though no

doubt carrying great suspicion with them are not in my opinion sufficient to convict the accused.

3. Another point made is that this gold lace was sold in Salem. Each side contends this fact to be in its own favour. Mr. Grant says that the fact that it was sold in Salem in the open market hawking it from shop to shop is a circumstance in his client's favour showing that he did not know the goods to be stolen goods as otherwise he would not have attempted to sell the goods in such an open manner. On the other hand the Crown Prosecutor contends that the fact that the accused did not sell the gold lace in Madras but sent it up country to Salem to have it sold is an indication that he knew there was something wrong with the purchase of the goods. I do not think that either inference can reasonably be drawn;. Any merchant in Madras may send goods honestly to Salem, and possibly also if a man has stolen goods he might take it away up country to some station to have them sold there rather than sell them in Madras. I think the circumstance is insufficient to draw a definite inference from. The Crown Prosecutor also contended that because the defence evidence is all untrue, I must take it that the accused is a dishonest person and I should import this dishonesty into his conduct in purchasing gold thread. I am quite unable to do this. It is the duty of the prosecution to establish by its own evidence that the accused is guilty. The weakness of the defence evidence is no ground for finding the accused guilty.

4. On the whole of the evidence I have come to the conclusion that the prosecution has failed to establish satisfactorily that the accused when he bought this gold thread knew or had reason to believe the same to be stolen property. The newspapers and handbills produced are of no value whatever in this case, for it is not shown that any of them got any where near the accused. The conviction and sentence of the accused will be set aside and his bail bond cancelled.