

In Re: Vellingiri

In Re: Vellingiri

SooperKanoon Citation : sooperkanoon.com/798169

Court : Chennai

Decided On : Mar-25-1949

Reported in : AIR1950Mad613

Judge : Rajagopalan, J.

Acts : [Evidence Act, 1872](#) - Sections 27; Indian Penal Code (IPC) - Sections 411

Appeal No. : Criminal Revn. No. 477 and Cri. Revn. Petn. No. 446 of 1948

Appellant : In Re: Vellingiri

Advocate for Def. : N.T. Raghunathan, Adv. for ;Public Prosecutor

Advocate for Pet/Ap. : P. Basi Reddi and ;M.S. Sethu, Adv.

Judgement :

ORDER

Rajagopalan, J.

1. The charges against the petitioner who was accused 1 in the lower Court were in the alternative (1) under Sections 457 and 380, Penal Code that he broke into the house of P. W. 1 and committed theft of a bicycle; and (2) that he dishonestly possessed M. Os. 2 and 3, a dynamo and a light, which formed part of the bicycle alleged to have been stolen. The conviction it-self was with reference to the second of the charges, punishable under Section 411, Penal Code. The conviction

was confirmed on appeal. Hence this petition for revision.

2. The bicycle was missed from the house of P. W. 1 on 6th December 1946. That it must have been stolen, can admit of no doubt. The bicycle itself was abandoned. Only the light and the dynamo were removed. The petitioner was arrested on 27th June 1947. On that day the Sub-Inspector of Police recorded Ex. P-3. The case for the prosecution was that the statements made by the petitioner in Ex. P-3 led to the recovery of M. O. 2 from P. W. 4 and the recovery of M. O. 3 from accused 2. P. W. 4 gave evidence that the petitioner sold M. O. 2 to him about four months before he gave evidence in August 1947.

3. The substantial question that arises for determination in this case is whether any portion of EX. P-3 is admissible at all under Section 27, Evidence Act. The portion of Ex. P-3 that was admitted in evidence in this case in the trial Court was:

'I gave the dynamo and the light to Venkataswami (accused 2) I got back from Venkataswami the dynamo light.... and the dynamo stolen from my next house and sold them to the proprietor of a soda factory near the Pillayar temple in Anuppapalayam for Rs. 15.'

True, M. O. 3, light, was recovered from the possession of accused 2. But there was no evidence at all independently of Ex. P-3 to show that accused 1 gave that light to accused 2. It was dishonest possession of the light M. O. 3 with which accused 1 was charged and the mere fact proved that it was with accused 2 would not necessarily lead to an inference that accused 2 obtained it from accused 1 or that accused 1 was ever in possession of it. All that was discovered on the basis of the statement, EX. P-3 was possession with accused 2 and not original possession with accused 1 and subsequent transfer of that possession from accused 1 to accused 2. So the portion of Ex. P-3 'I gave the dynamo and the light to Venkataswami' is not admissible in evidence, since the requirements of Section 27, Evidence Act, were not satisfied. With reference to M. O. 2, the statement admitted in evidence was 'therefore I got from Venkataswami the dynamo light taken in Avanasahi road and the dynamo stolen from my next house and sold them to the proprietor of a soda factory near the Pillayar temple in Anuppapalayam for Rs. 15.'

4. Kotayya v. Emperor, I.L.R. (1948) Mad. 1: A. I. R. 1947 P. C. 67 : (1947) CrI. L. J. 533 makes it quite clear that the previous history of M. O. 2 spoken to by accused 1 is not admissible in evidence. That accused 1 got it back from Venkataswami, or that earlier in point of time accused 1 stole it from the next house, would clearly come under the ban and would be inadmissible in evidence. Mr. Basi Reddi for the petitioner contends that even the statement that accused 1 sold the dynamo to the proprietor of the soda factory, i. e., P. W. 4 would be inadmissible in evidence. Their Lordships of the Privy Council in commenting upon the admissibility of the statement in Kotayya, v. King-Emperor, I. L. R. (1948) Mad. 1: A. I. R. 1947 P. C. 67: (1947) CrI. L. J. 533 'I will produce the knife concealed in the roof of my house' observed that it

'does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant.'

Neither a sale nor a concealment ceases to be a fact capable of proof though concealment like sale was a thing of the past; and so it is a thing to be inferred from the circumstances in which the object concealed in Kotayya's case, I.L.R. (1948) Mad. 1: A.I.R. 1947 P. C. 67: (1947) Cri. L. J. 533 and sold in this case, was found. The very fact that property was found concealed justified the admissibility of the statement that the accused concealed it. In this case property was found with P. W. 4. Even independently of his evidence that he purchased it, to account for possession of P. w. 4, the factum of sale had to be proved and that factum of sale is not an unreasonable inference from the possession of P. W. 4; it is one of the factors that should lead to that inference. I am unable to accept the contention of Mr. Basi Reddi that the portion of Ex. P. 3 'I sold the dynamo to P. W. 4' is inadmissible in evidence. P. W. 4 spoke to the sale. All that the Sub-Inspector discovered immediately on the basis of EX. P-3 was possession with P. W. 4. Earlier in point of time was the statement of the accused that he had sold it. That the accused sold it to P. W. 4 was the fact deposed to by P. W. 4. The question is, was it the accused's statement that led to the discovery of the sale by the accused to P. w. 4? That was a fact discovered by the Sub-Inspector as a result of the

statement in EX. P-3, though proof of it in Court came only subsequently with the statement made on oath by P. W. 4. I hold that the portion of Ex. P-3 admissible in evidence is 'I sold the (dynamo) to the proprietor of a soda factory near the Pillayar temple in Anuppapalayam for Rs. 15.'

5. No doubt the appellate Magistrate referred to EX. P-3 in great detail; but I am unable to accept the contention put forward that this was the sole basis of the conviction of the petitioner under Section 411, Penal Code. In para. 2 of his judgment the City First Class Magistrate referred to the evidence of P. W. 4 which apparently he accepted. The learned Magistrate also referred to the evidence of P. W. 3, but it was apparently not upon that alone that the learned Magistrate came to the conclusion that the petitioner was in possession of M. O. 3. The conviction of the petitioner with reference to M. O. 3 has no real basis and has to be set aside. But the conviction of the petitioner with reference to the possession of M. O. 2 recovered from P. W. 4 was fully justified upon the evidence on record--the substantive evidence of P. W. 4 as well as the admissible portion of the evidence in Ex. P-3 admissible under Section 27, Evidence Act. The conviction of the petitioner under Section 411, Penal Code is confirmed; but since the conviction now confirmed relates only to one of the two material objects which were included in the charge, the sentence imposed by the lower Court will be reduced to one-half, i. e., two months rigorous imprisonment. This sentence will run concurrently with any other sentence that may be awarded to the petitioner in any other case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com