

**In Re: Deepchand**

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**Court :** Chennai

**Decided On :** Apr-30-1970

**Reported in :** (1970)2MLJ253

**Appellant :** In Re: Deepchand

**Judgement :**

**K.N. Mudaliyar, J.**

1. The appellant seeks to file this appeal against his conviction for an offence under Section 411, Indian Penal Code (two counts). In brief the facts proved by the prosecution are mentioned here below.

2. In February, 1968 there was a theft in the house of P.W. 2. A ceiling fan (M.O. 2), a brass drum (M.O. 3), a brass Kudam (M.O. 4), a brass Thavalai (M.O.5) a brass box (M.O. 6), a brass Adukku (M.O. 7) a brass Dabba (M.O. 8), two brass Adukkus (M.O. 9 series) a brass Chombu (M.O. 10), a brass plate (M.O. 11), twenty items of eversilver utensils (M.O. 12 series) an eversilver Kuthu-Vilakku (M.O. 13), an eversilver soap box (M.O. 14) and an electric table light (M.O. 15) were stolen from the house by P.W. 4 who later sold the stolen articles, in addition to a silver plate and two eversilver articles, to the appellant for a sum of Rs. 75. The prosecution claims that M.Os. 2 to 15 were worth more than Rs. 300. The appellant promised to make a further payment of some more amount later. P.W. 4 also committed theft of a copper Deksa (M.O. 1) worth Rs. 300 from the house of

P.W. 1 and sold the same to the appellant for Rs. 25.

3. P.W. 4 was arrested. He took P.W. 5 the Sub-Inspector of Police to the appellant's pawn shop. On being questioned by P.W. 5 regarding his transaction with P.W. 4, the appellant produced M.O. 1 as well as M.Os. 3 to 15 and several other articles. M.O. 2 which had in the meanwhile been sold by the appellant to P.W. 3 Srinivasan for Rs. 80 was also recovered from P. W. 3 on the information of the accused. Subsequently, P.W. 4 was convicted on his own plea of guilty.

4. The appellant admits that he purchased M.Os. 1 to 15 from P.W. 4. But he pleads that he received the articles innocently for value without knowledge that they were stolen property. His further plea is that M.O. 1 was pledged with him by P.W. 4 for Rs. 55 and the article was subsequently purchased outright for Rs. 70. The appellant would say that P.W. 4 was deliberately and falsely mentioning the amount as Rs. 25 at the instance of P.W. 5. As regards the purchase of M.Os. 2 to 15 the appellant would maintain that he had paid Rs. 75 for M.O. 2, Rs. 40 for the silver articles and Rs. 80 for the five items of brass vessels. The statement of P.W. 4 according to the plea of the appellant, is wholly false. The appellant did not examine any defence witness.

5. The fact that M.Os. 1 to 15 are stolen property, is not controverted.

6. The only question that dwindles down to a focal point is whether the appellant received the articles dishonestly knowing or having reason to believe the same to be stolen property. Undoubtedly, the evidence of P.W. 4 regarding the purchase price offered by the appellant is that of an accomplice. We have got to seek for corroboration of the evidence of P.W. 4 in material particulars at least circumstantially. The appellant is a pawn broker and he has to maintain books of account in the usual course of business as required by the Madras Pawn Brokers Act (Act XXIII of 1943). When the appellant says that M.O. 1 was pledged to him for Rs. 55 and thereafter it was purchased by the appellant for Rs. 70 it was certainly open to him to adduce the necessary documentary evidence in proof of the purchase of M.O. 1 for Rs. 70. I find no such evidence on record. Another circumstance is of significance for indicating the appellant's dishonest receipt of M.Os. 2 to 15 along with a silver plate and two other eversilver articles for Rs. 75

promising to make a further payment later. This act on the part of the appellant shows that he wanted to exploit the financial stringency of P.W. 4 knowing that M.Os. 2 to 15 were stolen articles. Another circumstance of significance to be noticed is that P.W. 4 visited the appellant's shop on 25 occasions within a period of three or four months. It must have struck a man of ordinary prudence as to why P.W. 4 frequently visited his shop and sold a variety of articles and this act on the part of P.W. 4 should have furnished the appellant reason to believe that M.Os. 1 to 15 are stolen property. Assuming for one moment that the appellant did not have reason to think that the young man P.W. 4 had stolen the articles, the appellant at least must have suspected that P.W. 4 had brought the articles for clandestine and subterranean disposal without the knowledge of his parents. In my view, such a suspicion must have roused in the appellant a reasonable belief that he dishonestly purchased stolen property. Yet another circumstance revealed by the evidence of P.W. 4 is that he used to candidly tell the appellant that the articles brought by him were stolen property. I believe this part of the evidence of P.W. 4 wholly.

7. Regarding the sale of M.O. 1 a copper Deksa to the appellant, P.W. 4 says that he received only Rs. 25 for M.O. 1. The appellant pleads that he purchased it for Rs. 70. It is impossible for me to hold, on the strength of the mere verbal statement of the appellant, that the appellant purchased M.O. 1 for Rs. 70. If the appellant, a pawn broker who has to maintain accounts in the regular course of his business under the Madras pawnbrokers Act, has produced his book of account showing the price paid for M.O. 1, his statement that he purchased M.O. 1 for Rs. 70 may possibly be true. But the appellant has not produced such account.

8. Regarding the sale of M.O. 2 a ceiling fan, it ought to have struck a man of ordinary prudence as to why P.W. 4 should sell the ceiling fan unless it be stolen property. The plea of the appellant is that he paid Rs. 75 for the ceiling fan. No evidence is adduced to render the plea of the appellant as possibly true. Regarding the sale of M.Os. 3 to 15 by P.W. 4 the plea of the appellant is that he paid Rs. 40 for the silver articles and Rs. 80 for the five items of brass vessels. On the other hand, the evidence of P.W. 4 is that the appellant gave him Rs. 75 for all these articles promising to pay some more amount later. Again there is no

evidence adduced by the appellant to render his plea about the purchase price of M.Os. 3 to 15 as possibly true.

9. Mr. Gopaldaswami, the learned Counsel for the appellant, argued, that the prices paid by the appellant for the purchase of M.Os. 1 to 15 are reasonable, and that the appellant had no guilty knowledge that M.Os. 1 to 15 are stolen property by reason of the decent-looking appearance of P.W. 4 which infused confidence in the mind of the appellant regarding his transaction with P.W. 4 covering the sale of M.Os. 1 to 15 and some pledges. I cannot accept this argument for the reasons stated above. In my view, the very sophisticated appearance of P.W. 4 must have roused a grave suspicion in the mind of the appellant, particularly in the light of the frequent sales or pledges on as many as 25 different occasions within a short span of three to four months. Such a grave suspicion must have furnished the appellant with a reason to believe that M.Os. 1 to 15 are stolen property. I have already observed that there is no material for me to hold that the statement of the appellant regarding the prices paid for the purchase of M.Os. 1 to 15 is rendered possibly true. I find that the appellant dishonestly received M.Os. 1 to 15 from P.W. 4 knowing reason to believe the same to be stolen property.

10. The learned trial Magistrate has given Very good reasons for supporting his finding that the appellant had purchased the articles dishonestly with the guilty knowledge of their true character. I am in entire agreement with the finding of the learned trial Magistrate and also with the reasons supporting the finding. I affirm the finding of the learned trial Magistrate who accepts P.W. 4's version as substantially true that the appellant had purchased M.Os. 1 to 15 from P.W. 4 with the full knowledge of the fact that they were all stolen property.

11. Bearing in mind the principles of law enunciated in the various authorities and rulings noticed by me in my judgment in Crl. App. No. 820 of 1968, I have given reasons in this judgment for supporting my finding that the appellant had dishonestly received M.Os. 1 to 15 from P.W. 4 knowing or having reason to believe the same to be stolen property. I see no grounds to interfere with the conviction of the appellant.

12. Mr. Gopaldaswami, the learned Counsel for the appellant, appealed to the clemency of this Court by pleading that the appellant is a first offender, that he is a young man of 25 years, and that imposition of any heavy fine amount will meet the ends of justice in view of the fact that the appellant had undergone imprisonment for a period of three days. I have weighed this appeal earnestly made by the learned Counsel for the appellant with anxious thought. I have also heard the view point of the State in this matter. I consider that the ends of justice will be met by my reducing the sentence of imprisonment to a period of two weeks in addition to my enhancing the fine by Rs. 250 on each count in default Rigorous Imprisonment for one month, maintaining the fine and default sentence already imposed by the trial Court. I order accordingly. The sentences of imprisonment on each count are directed to run concurrently and also with those in Crl. App. No. 820 of (968. Time for payment of fine is three months. With the modification in the sentence the Criminal Appeal is dismissed.

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