In Re: thevar Servai and ors.

In Re: thevar Servai and ors.

SooperKanoon Citation : sooperkanoon.com/810642

Court : Chennai

Decided On : Nov-17-1937

Reported in : AIR1938Mad477; 173Ind.Cas.450

Appellant : In Re: thevar Servai and ors.

Judgement :

Horwill, J.

1. The appellants in C.A. No. 170 of 1937 were charged Under Sections 392, 394 and 397, I.P.C., with having waylaid a bandy and beaten the driver and the occupant and taken from the occupant valuable jewels; in the alternative they were charged Under Section 411, I.P.C. The jury have found them guilty Under Sections 392, 394 and 397. The appellants in C.A. No. 136 of 1937 were charged with receiving property that has been the subject of this robbery. The jury have found them guilty of the offences under which they were charged. The Assistant Sessions Judge of Ramnad sentenced accused 1 and 2, who are the appellants in C.A. No. 170 of 1937, to the minimum sentence Under Section 397, viz. seven years' rigorous imprisonment. The appellants in C.A. No. 136 of 1937, who were accused 3 and 4, have been sentenced to the maximum punishment which can be inflicted Under Section 411,1. P.C.

2. With regard to accused 3, from whom the stolen property was recovered four days after the offence, it is argued that no proper search took place and that the

jury have not been properly charged with regard to the legal requirements of Section 103, Criminal P.C. I do not find any substance in either of these objections. With regard to accused 4, the complaint of the learned advocate appearing on his behalf is that the attention of the jury was not sufficiently drawn to the fact that there was an interval of one month and seven days between the commission of the robbery and the finding of jewels in his possession and to the implications arising there from. There can be no doubt that the learned Assistant Sessions Judge did draw the attention of the jury to the fact that the property was recovered only on 19th May 1936 and also to the fact that the inference Under Section 114, Illus. (i), Evidence Act, that a man who is in possession of stolen goods soon after a theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. But the objection is that these two elements that have to be considered were referred to by the learned Sessions Judge in two parts of the same judgment widely separated and that the jury probably therefore did not associate them. It would have been undoubtedly better had the learned Judge, nor discussing the evidence against accused 4, told them that they should consider for themselves whether the date of the arrest of accused 4 was sufficiently near to the date of the offence to justify their making the presumption Under Section 114, I Illus. (i). It has however to be remembered that there are certain other circumstances in the case which entitled the jury to bridge over this interval. A search was made of accused 4's house on information furnished by accused 3 on 16th April. Prom that date onwards, the police were on the look out for accused 4, and the Sub-Inspector has deposed that this accused was absconding until the date of his arrest (19th May the date of recovery of the jewels from this accused) and there was certainly ground for thinking that accused 4, knowing of the search in his house, had kept out of the way during that time.

3. The last point argued in C.A. No. 136 of 1937 is with regard to the sentences on the accused. Although the maximum punishment which can be inflicted Under Section 411 is much less than that which can be inflicted Under Section 394 and 397 still it has to be remembered that if it were not for the existence of receivers of stolen property, most of these robberies would never be committed. It is because there are people ready to receive this property and to convert it, that encouragement is given to persons who are inclined to commit robbery. Accused 3

was found in possession of a considerable amount of jewellery and there seems to be no reason why he should not receive the maximum punishment, especially as he presumably knew the circumstances in which this robbery had been committed. Accused 4 however was found in possession of only two bits of chain and the sentence is therefore very heavy. His sentence is therefore reduced from three years' rigorous imprisonment to eighteen months' rigorous imprisonment.

4. The objection to the charge with regard to accused 1 and 2 is that the Judge did not sufficiently direct the jury to the necessity for their finding that both the accused had aruvals; and it is also argued that Section 397 cannot be applied when all that has been, shown is that the accused were possessed of aruvals. Taking the second point first, it is true that no injuries were caused by the aruvals; but it does not seem that the accused were merely in possession of aruvals. They held them in such a manner that P.W. 2, who was compelled to give up the jewels, was fully aware that the accused were armed with these aruvals. If robbers so exhibit dangerous weapons as to intend that by their exhibition of them, the persons robbed or sought to be robbed are likely to be further intimidated and that the commission of robbery might be facilitated the robbers can be punished Under Section 397, although they did not actually inflict blows with these weapons. The application of Section 397 by the learned Assistant Sessions Judge was therefore correct.

5. It appears that there were some grounds for doubting whether both these accused were armed with aruvals; and the learned Sessions Judge has drawn the attention of the jury to that in para. 14 of his judgment. Here again the complaint is not so much that the Judge did not tell the jury that it was necessary for them to find that both, these accused were armed with aruvals for he did this; but that the portion of his charge in which he pointed this out to the jury was separated by a considerable time from that portion of his charge in which he referred to the discrepancies with regard to the accused's being armed with a stick or an aruval and finally summed up the evidence against accused 1 and 2. It is not possible however for any Judge to bring all the important facts together in one paragraph for the benefit of the jury. Where there are a large number of important points to be discussed, it is necessary that some of those points should be separated by some

considerable time from the other items of the charges. It is true that he might have told the jury that if they believed that only one of the accused was armed with an aruval and they were uncertain which accused it was, they should find both of them not guilty; but I do not think that the evidence in the case really necessitated the addition of a sentence of this kind, because although in the earlier documents there is a reference only to a stick and an aruval, yet the evidence was consistently to the effect that both the accused were armed with aruvals. It was therefore difficult for the jury to accept the evidence as true with regard to one accused and not with regard to the other. After they had been warned that the complaint of P.W. 2 referred only to a stick and an aruval and it was in evidence that accused 2 had a stick, it was open to the jury to find that accused 2 had only a stick and not an aruval. There was no reason on the evidence apparently why they should suspect that accused 1 had no aruval. I do not therefore consider that there was anything in the manner in which the jury were charged with respect to the use of aruvals that would amount to a misdirection prejudicing the accused. As accused 1 and 2 were awarded the minimum sentence, there can be no ground for complaint on that head. Their appeal is therefore dismissed.