

In Re: B. Dasappa

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Court : Chennai

Decided On : Mar-26-1915

Reported in : AIR1916Mad1109; 29Ind.Cas.85

Judge : Kumaraswami Sastri, J.

Appellant : In Re: B. Dasappa

Judgement :

Kumaraswami Sastri, J.

1. The petitioner has been convicted under Sections 217 and 411 of the Indian Penal Code. The grounds urged in revision are:
2. (1) that there is no evidence that the property was stolen property, and
3. (2) that the accused did not disobey any direction of the law.
4. Both Courts found that the petitioner who was a Police constable, having received a complaint of theft, held an investigation on his own responsibility (without reporting the fact that he received a complaint to his superior officers), got possession of a piece of gold (said to be a portion of the stolen property) and only delivered it to the Sub-Inspector when he was about to be searched.
5. There can be little doubt that the accused took possession of a bit of gold during his investigation and the first question is, whether it was part of the stolen kasitali.

Kittachari, P.W. No. 2, who was accused of the theft denies that the piece, M.O. No. 1 which was found on the petitioner was part of the stolen property. He retracts the statements in Exhibit D and having regard to the ruling of the Privy Council in Bomanjee Cowasjee's case 341. A.P 51; II C.W.N. 370 : 5 C.L.J. 123: 9 Bom. L.R. 3 : 17 At. L.J. 67; 2 M.L.T. 96 : 34 C.P 129 : 5 Cri. L.J. 50, it is difficult to see how Exhibit I) can be used for any purpose except to contradict the evidence of the witness. The retracted statement, Exhibit D, cannot be taken to represent the truth and a conviction based thereon. There is nothing in the prosecution evidence to prove that the piece of gold found in the possession of the accused was part of the stolen kasitali. The second Glass Magistrate speaks in paragraph 3 of admissions made by the accused, that P.W. No. 2 had stolen a kanti and melted it. Defects in the prosecution evidence cannot be supplied by admissions by the accused during the course of the argument, and in the present case the admissions referred to in paragraph 3 of the Magistrate's judgment do not go to show that the piece M.O. 1, which nobody identifies as part of the kasitali was stolen property. The conviction under Section 411 cannot stand.

6. As regards the conviction under Section 217, I am of opinion that the accused, whose duty it was, under Section 523 of the Criminal Procedure Code, to see that the recovery of M.O. 1 was reported to the Magistrate either directly by himself or through his superior officers, deliberately failed to do so. It is clear that he did not report the recovery of M.O. 1 which he got from P.W. No. 3 during the search. The evidence in the case and the conduct of the petitioner shew that his object was to screen the culprit and appropriate the piece of gold found.

7. I set aside the conviction under Section 411, but confirm the conviction under Section 217 and reduce the sentence to three months' rigorous imprisonment.

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