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Hathim Mondal Vs. Emperor

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Court : Kolkata

Decided On : Feb-18-1920

Reported in : 56Ind.Cas.849

Judge : Lancelot Sanderson, C.J. and ;Walmsley, J.

Appellant : Hathim Mondal

Respondent : Emperor

Judgement :

Lancelot Sanderson, C.J.

1. In this case we do not admit the appeal. The charge against the accused was under Section 411, Indian Penal Code, vie,, dishonestly receiving stolen property, knowing or having reason to believe the same to be stolen property.

2. The only question which had any real importance in this case was the identity of the person who was in possession of the bundle, which contained the stolen articles at Jessore Station on the 1st of October last year: and, there is no misdirection, as far as I can see, in the learned Judge's charge to the Jury in that respect. The Jury came to the conclusion that the accused person was the individual who was in possession of the bundle containing the stolen articles on the 1st of October, the burglaries having been committed between the 28th of September and the 1st of October. Therefore, it may be said that the accused was in possession of recently stolen articles. The Jury found that the accused person

was in possession of them, and he offered no explanation of such possession. Consequently, we see no reason to admit this appeal.

3. But there is a passage in the learned Judge's charge which in our judgment is not a correct direction: and, although it is immaterial to this case, we think it is desirable to draw attention to the misdirection, in order that it may not be repeated on subsequent occasions. The learned Judge says this: 'It is the business of the prosecution to prove its case entirely; and no inference should be made against an accused because he examines no witnesses, and does not attempt to explain the evidence against him. But the matter is different in a case under Section 411, Indian Penal Code. When it is established that an accused is found in possession of stolen property, it is his business to show that he came by it honestly, and that he did not know that it was stolen property. In the present case the accused denies his possession altogether: he, therefore, does not make any attempt to show that he was in honest possession of the property.' Therefore, (unless '' there appears strong reason to the contrary) if the Jury find that the accused was in possession of the property and that the pro-party was stolen, they should presume that the possession of accused was dishonest and that he had reason to believe that the property was stolen.' In our judgment, that is not a correct direction. In the first place it is not pointed out that the possession of stolen goods referred to must be possession soon after the theft, or that the stolen goods must have been 'recently' stolen. Further, the charge is not in our judgment sufficient in other respects, I think the best way of dealing with it is to draw attention to a judgment of the Lord Chief Justice of England in the case of R. v. Isaac chama and Jacob Abramovitch (1914) 11 Cr. App. R. 45 at p. 49 : 84 L.J.K.B. 396 : 112 L.T. 480 : 70 J.P. 184 : 59 S.J. 288 : 81 T.L.R. 88, and as that book may not be available in all Courts, I propose to read what the Lord Chief Justice said. Having stated the facts, he said: 'It is clear that on those facts, and on a proper direction, there was sufficient evidence on which the Jury, if so minded, could convict the appellants. It is admitted by Counsel for both appellants that there was evidence to go to the Jury. The case really resolves itself into one question, whether the Judge gave a proper direction to the Jury before they arrived at their decision. Cases of this kind have come frequently before this Court complaining of language used by the Judge at the trial in pointing out the principle of law for the guidance of the Jury. It

is essential in cases of this character that there should be a careful and proper direction. Where the prisoner is charged with receiving recently stolen property, when the prosecution has proved the possession by the prisoner, and that the goods had been recently stolen, the Jury may be told that they may, not that they roust, in the absence of any reasonable explanation, find the prisoner guilty. But if an explanation is given which may be true, it is for the Jury to say on the whole evidence whether the accused is guilty or not; that is to say, if the Jury think that the explanation may reasonably be true, though they are not convinced that it is true, the prisoner is entitled to an acquittal, because the Crown has not discharged the onus of proof imposed upon it of satisfying the Jury beyond reasonable doubt of the prisoner's guilt. That onus never changes; it always rests on the prosecution, That is the law; the Court is not pronouncing new law, but is merely re stating it, and it is hoped that this restatement may be of assistance to those who preside at the trial of such cases.' I concur in the Lord Chief Justice's hope that this statement may be of assistance to those who preside at the trial of such oases.

4. The application for admission of this appeal must be rejected for the reasons that I have already mentioned.

Walmsley, J.

5. I agree.

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