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Court : Kolkata

Decided On : May-09-1935

Reported in : 164Ind.Cas.721

Judge : Lort-Williams and ;Jack, JJ.

Appellant : Daud Sheik

Respondent : Emperor

Judgement :

Lort-Williams, J.

1. In this case, the appellant was charged under Sections 395 and 412 oft the Indian Penal Code, and tried by the Sessions Judge of Murshidabad and a jury, who found him guilty under Section 412 and sentenced him to five years' regorous imprisonment.

2. There was no doubt that a docoity was committed in the house of one Ram Chand when he and his family were asleep. There were 12 or more dacoits and they broke into the house but eventually went away when the villagers appeared. They took certain properties with them. This accused made a confession, but the learned Judge decided that it was not a Voluntary confession and, therefore, refused to admit it in evidence. Unfortunately he seems to have made the common mistake by allowing the Magistrate who recorded the confession to give evidence

that a confession had been made by the accused, before deciding the question whether it ought to be admitted or not. As I have already pointed out in a recent case it is no good telling the jury first that the accused has made a confession and then sending them out of Court while the question is discussed whether the confession ought to be admitted or not. A great deal of damage has already been done by the mere statement that the accused has confessed. The words of the confession, if excluded, are not brought to the attention of the jury, but nevertheless they have heard that something in the way of a confession has been made and that for some reason or other, the Judge has ordered it to be. excluded from evidence. However, the learned Judge told the jury that he had excluded it, because he came to the conclusion that the accused has not made it voluntarily, and begged them to forget that the accused had made a confession. The Judge in order to try and remove from the minds of the jury any prejudice to the accused, told them that they might suppose that he had incriminated other persons and not himself. The admission of the statement hat he had made a confession and retracted it was of course of supreme importance in considering the question whether he was guilty under Section 412 because, as the Judge told the jury, they ought to come to a conclusion whether he had knowledge of the dacoity. There was no other evidence that he had taken part in the dacoity, no one had recognised him, though some witnesses spoke to the fact that they had seen him going in the direction of the dacoity. As the Judge pointed out 'The Urga is not at the end of the world and he may have been going to some place beyond it. In view of the evidence the learned Judge ought to have withdrawn from the jury the charge under Section 395. Nevertheless, he allowed this charge to go to the jury and as they did not mention it when they brought in their verdict, it must be assumed that they found the accused not guilty of that offence.

3. The learned Judge then directed the jury with regard to the offence charged under Section 412. His charge on this point contains serious mis-directions. He said as follows:

The law allows, you to assume that if stolen property is found in a man's, possession, he knows at to be stolen property until kit proves the contrary.

4. This Court has pointed out again and again that in cases of receiving, the onus of proof never passes to the accused. The Crown must prove guilty knowledge. Under Section 114(a) of the 'Evidence Act, the Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession. If he gives an account of his possession which may reasonably be true, though the jury are not convinced that it is true, and there is no other evidence of his guilty knowledge, the prison-eras entitled to an acquittal. There is no obligation to prove that the property is his. All that he is required to do is to give an account, and if that account may reasonably be true, though nevertheless the jury may not be convinced that it is true, he must be acquitted, because the Crown have failed to, satisfy the onus which always remains upon them to prove his guilty knowledge. In the hope that his principle of law may someday be appreciated by the learned Judges in the Subordinate Courts, I again refer to the judgment of Lord Reading, Lord Chief Justice in the case of Isaac Scheme and Jacob Abramoviteh 11 Cr. App. Rep. 45, which has been referred to on several occasions in the judgments of this Court.

5. The learned Judge went on to say that:

the accused has not proved this and, therefore, if you are satisfied, that the thala found in his house was property stolen from Ram Chand's house, you can presume that the accused had it dishonestly. You have to decide whether he knew that it came to him from this dacoity.

6. The whole of this paragragh clearly amounted to a mis-direction. The evidence with Regard to this thala is that it was identified by Ram Chand and his family as belonging to them. It was found in the accused's bari. At the trial he stated that it belonged to him or to his wife, and that he obtained it as part of his share in a partition between him and his brothers in July ,1933, that is, about a year before the date of this dacoity. It is an ordinary common plate used in every Hindu household. Ram Chand and his family said that it had been in their house for five years they could recognise it. The learned Judge pointed out to the jury that it was a common article of domestic use and asked them to consider whether they would

be able to accept the evidence of the complainant that the thala was, in fact, his. One witness said that the accused did not claim the thala when it was found by the daroga in his house. Finally, the learned Judge suggested that if they came to the conclusion that the thala belonged to the complainant and had been stolen in the dacoity and that it had been found in the possession of the accused within 14 days afterwards as stated in the evidence, then they might presume either that he was the thief or that he received it, knowing that it was stolen in the dacoity. That again, is a misdirection.

7. Upon the facts disclosed in this case, the only offence of which this accused could have been convicted was one of receiving under Section 411, and that by making use of the presumption under Section 114 (a) of the Evidence Act. It is just possible that upon a proper direction, this accused might have been convicted under that section. But in view of the fact that he gave an explanation which might reasonably be true that the plate was his and that it was a common article used in every Hindu household, we do not think it necessary to send this case back for re-trial. Owing to the mis-directions to which I have referred, the conviction and sentence must be set aside and the accused acquitted.

Jack, J.

8. I agree.

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