

Alisher vs State Of Uttar Pradesh on 28 September, 1973

Equivalent citations: AIR1974SC1830, 1974CRILJ897, (1974)4SCC254, 1973(5)UJ879(SC)

Bench: H.R. Khanna, R.S. Sarkaria, V.R. Krishna Iyer

JUDGMENT

Khanna, J.

1. This is an appeal by special leave by Alisher against the judgment of the Allahabad High Court whereby the High Court altered the conviction of the appellant from under Section 412 Indian Penal Code to that under Section 411 Indian Penal Code and reduced his sentence from rigorous imprisonment for a period of three years to that of one year.
2. The prosecution case is that a dacoity took place at the house of Ajab Singh in village Kanjoli within the area of police station Rampur on the night between July 26 and 27, 1965. As a result of that dacoity, one D.B.B.L. Gun No 47942, belonging to Dataram, father of Ajab Singh, was carried away by the dacoits. Report about the dacoity was lodged by Ajab Singh with the police. On April 16, 1966, it is stated, Sub Inspector Hari Prakash Sharma on receipt of intimation organised a police picket on a canal road in police circle Titawi. At about 6 p.m., the appellant was seen coming from the direction of village Khatauley. The appellant was stopped and the barrel of a gun which had been wrapped in a piece of cloth was recovered from him. The barrel recovered from the appellant bore No. 47942 and was of gun No. 47942 which had been carried away by the dacoits from the house of Ajab Singh on the night between July 26 and 27, 1965.
3. The appellant was thereafter sent up for trial.
4. The appellant in a statement under Section 342 of the CrPC denied the prosecution allegations and attributed the present case to his enmity with Sub Inspector Hari Paakash Sharma and one Gajraj Singh. Defence evidence was produced on behalf of the appellant to show that the butt of the gun in question had earlier been recovered on March 26, 1966 in village Bharsi in police circle Kandla from one Fateshuddin. The trial court accepted the prosecution case and convicted the appellant under Section 412 Indian Penal Code. On appeal, the High Court altered the conviction of the appellant to that under Section 411 Indian Penal Code, The High Court in this connection observed that there was nothing to show that the appellant was aware of the fact that the gun had been carried away as a result of dacoity. In other respects, the High Court accepted the prosecution case.

5. In appeal before us Mr. Singh on behalf of the appellant has contended that the conviction of the appellant can be maintained under Section 411 Indian Penal Code only if it is shown that he dishonestly received or retained the stolen barrel knowing or having reason to believe the same to be stolen property. He has referred in this context, to illustration (a) to Section 114 of the Indian Evidence Act and submitted that as a period of more than eight months elapsed between the date of dacoity and that of the recovery of the barrel of the gun from the appellant, the presumption in accordance that illustration cannot be drawn against the appellant. In this respect we find that according to illustration (a) to Section 114, 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. The illustration makes it plain that the time factor has a material bearing and the court must keep it in view before it can draw the presumption in accordance with the illustration. The presumption can be raised if a person is found to be in possession of stolen goods soon after the theft, If however, a long period elapses between the date of the theft and the date on which a person is found to be in possession of the stolen articles, the court would not be justified in drawing the presumption in accordance with the above illustration. The question as to how much period should elapse after the theft in order to rule out the presumption under illustration (a) would depend the nature of the stolen article and the facts of each case. If the stolen article recovered from the accused is one which frequently changes hand, in such a case a much shorter period would be required before the court would be entitled to draw the presumption under the above illustration. On the contrary, if the stolen article found in the possession of the accused is one which does not normally change many hands, the court may draw the presumption under the illustration even after the lapse of a number of months. Again, if the stolen articles recovered from the possession of the accused are some rare books or paintings of a great master or some idol of historical value, the court will be well justified in drawing a presumption against the person found in possession under the above illustration even after the lapse of a period of more than one year. As against that, if the stolen goods of which the accused is found in possession comprise clothes or other articles which are easily available in the market, the court may well decline to draw the presumption after the lapse of a much shorter time. It would be opposite in this context to refer to the following passage from Best on evidence quoted on page 1234 of Basu's law of Evidence, Fifth Edition :

Suppose the Pitt Diamond or the Crown Jewels were stolen, and after the lapse of one or two years, found in the possession of a person in a comparatively humble station of life, who refused to give any account of where he got them, would there be anything harsh or violent in presuming that he had not come by them honestly? But suppose the goods lost were merely a pair of shoes, or a case such as in his station of life it would be natural and proper for the prisoner to wear, and that these were not treated into his possession, until after a few months from the time of the theft, the injustice of making so violent a presumption as to deem him the thief becomes obvious at once.

6. In the present case the article recovered from the appellant was the barrel of gun No. 47942 which had been carried away by the dacoits as a result of dacoity. The barrel bore the number of the gun. Such a barrel of a gun does not normally change many hands. The nature of article in question is

such that there was bound to arise suspicion in the mind of the person to whom the article was handed over. No satisfactory explanation has been furnished by the appellant for his possession of the barrel. It cannot in our view be said that the appellant acquired the possession of the barrel innocently. Looking to the peculiar nature of the stolen article recovered from he appellant, we see no cogent ground to interfere with the view of the High Court and the trial court that a presumption can be drawn against the appellant in accordance with illustration (a) to Section 114 of the Indian Evidence Act after the expiry of a period of eight or nine months from the date of dacoity. We would accordingly maintain the conviction of the appellant.

7. The appellant was released on bail during pendency of the appeal. Keeping in view the peculiar circumstances of the present case, we are of the opinion that it is not necessary to send the appellant back to jail and that it would meet the ends of justice if the sentence of imprisonment awarded to the appellant is reduced to the period of imprisonment already undergo. We order accordingly.