Sheo Nath vs The State Of Uttar Pradesh on 15 October, 1969

Equivalent citations: 1970 AIR 535, 1970 SCR (2) 796, AIR 1970 SUPREME COURT 535, 1970 MADLW (CRI) 144 1970 ALLCRIR 208, 1970 ALLCRIR 208, 1970 CRI. L. J. 601, 1970 2 S C R 796

Author: S.M. Sikri

Bench: S.M. Sikri, P. Jaganmohan Reddy

PETITIONER:
SHEO NATH

Vs.

RESPONDENT:
THE STATE OF UTTAR PRADESH

DATE OF JUDGMENT:
15/10/1969

BENCH:
SIKRI, S.M.
BENCH:
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REDDY, P. JAGANMOHAN

CITATION:
1970 AIR 535 1970 SCR (2) 796
1969 SCC (3) 116

ACT:
Evidence Act, (1 of 1872)- Section 114 illustration (a) Recovery from appellant's shop of cloth stolen in dacoity- Conviction under s. 396 I.P.C. solely based on discovery of cloth and their identification- Inferences to be drawn under s. 114, Evidence Act.

HEADNOTE:
The house of the appellant, a cloth merchant, was searched and three lengths of cloth were recovered which were subsequently identified as having been stolen from a shop in a dacoity in which clothes, ornaments, cash etc. were stolen. The appellant was not named by the eye-witnesses or in the dying declaration as having taken part in the dacoity. Relying on the discovery of the cloth and their identification the High Court convicted him under s. 396

Penal Code. The Court observed that it was legitimate to infer that he was one of the dacoits in view of illustration (a) to Section 114 of the Evidence Act. In the appeal to this Court it was contended that the High Court should have convicted the appellant only under section 411 Penal Code.
Allowing the appeal,
HELD : On the facts the only legitimate presumption to be drawn is that the appellant knew that the goods were stolen but he did not know that they were stolen in a dacoity. All the property which was stolen by the dacoits was not recovered from the appellant. The appellant, a cloth merchant, may well have acquired these goods as a receiver. It has not been shown that in the village in which the appellant lived it was known that a dacoity had taken place and goods had been stolen in the dacoity. [799 B-C]
Wasim Khan v. State of Uttar Pradesh, [1956] S.C.R. 191 distinguished;
Sanwal Khan v. State of Rajasthan A.I.R. 1956 S.C. 54, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 49 of 1969.

Appeal by special leave from the judgment and order dated December 2, 1968 of the Allahabad High Court in Criminal Appeal No. 1277 of 1968.

R. L. Kohli, for the appellant.

O. P. Rana, for the respondent.

The Judgment of the Court was delivered by Sikri, J. The only question which arises in this appeal by special leave is whether the appellant, Sheo Nath, should be convicted under s. 396, I.P.C., or s. 411, I.P.C., or S. 412, I.P.C. The facts as found by the High Court are these. A dacoity was committed at the shop of Ram Murat in Dhaneja village by 15 to 20 persons on August 19, 1966, at about 11.30 p.m. One dacoit, Ram Shankar, was armed with a gun while others carried spears, Gandasas and lathis. During the course of the dacoity Ram Murat was injured. One Pancham, who lived in a house not far from Ram Murat's shop, and two others came running on heating the noise. Pancham was shot down with the gun by dacoit Ram Shankar. The dacoits then escaped with clothes, ornaments, cash, etc., looted from Ram Murat's shop. After the dacoits left Ram Murat dictated a report about the occurrence in which lie named Ram Shankar Singh, Jaintri Prasad Singh, Nanhe Singh and Sulai accused as having been among the culprits and this report was sent to the Jalalpur police station, five miles away, where it was received-and recorded at 6 a.m. next morning. On August 22, 1966, i.e., three days after the dacoity, the house of Sheo Nath, appellant, was searched and three lengths of cloth were recovered which were subsequently identified by Ram Murat and a tailor named Bismillah as having been stolen from Ram Murat's shop in the dacoity.

The High Court, agreeing with the learned Sessions Judge, relied on the evidence of three eye-witnesses regarding the manner in which the occurrence took place and regarding the participation of the four named accused persons. Sheo Nath had not been named by the eye-witnesses or in the dying declaration of Panchain and no witness claimed to have identified him taking part in the dacoity. But, relying on the discovery of three lengths of cloth and their identification, the High Court convicted Sheo Nath under s. 396, I.P.C. The High Court observed :

> "From the material on record we are fully con- vinced that the Exhs. 2 and 3 were stolen from the shop of Ram Murat in the course of the dacoity committed in the night between 19 to 20 August 1966, and since they were recovered from the possession of Sheonath appellant only 2 or 3 days later, it is legitimate to infer that he was one of the dacoits vide illustration (a) to section 114 of the Evidence Act. Sheo Nath, therefore, has been rightly convicted under section 396, I.P.C."

The learned counsel for the appellant contends that in the circumstances of the case the High Court should not have convicted the appellant under s. 396, I.P.C., but only under s. 411 I.P.C. Section 114 of the Evidence Act and illustration (a) read as follows :

> " 114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case.
>
> illustrations.
>
> The Court may presume-
>
> (a) that a man who is in possession of stolen goods after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."

This Section was considered by this Court in Sanwal Khan v. State of Rajasthan(1). This Court, after considering some High Court cases, observed :

> "In our judgment no hard and fast rule can be laid down as to what inference should be drawn from a certain circumstance. Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murderer. Suspicion cannot take the place of proof."

In Wasim Khan v. State of Uttar Pradesh(2) this Court held that " recent and unexplained possession of the stolen property while it would be presumptive evidence against a prisoner on the charge of robbery would similarly be evidence against him on the charge of murder." On the facts of that case this Court held that the appellant was rightly convicted of the offence of murder and

robbery. But, apart from the possession of stolen property, there were other circumstances indicating that the appellant was guilty of murder and robbery. The circumstances were that the appel- lant in that case had travelled with the deceased on his bullock cart alone and the deceased never reached his home and was found murdered. The appellant was found in possession of the goods ,of the deceased three days after and the appellant made no effort to trace the whereabouts of the deceased or lodge information of his disappearance from the bullock cart.

In the present case three presumptions are possible from the recovery of the stolen goods from the appellant three days after the occurrence of the dacoity (1) that the appellant took part in the dacoity;

(2) that he received stolen goods knowing that the goods were stolen in the commission of a dacoity; and (3) that the appellant received these goods knowing them to have been stolen.

(1) A.I.R. 1956 S.C. 54.

(2)[1956] S.C.R. 191.

The choice to be made, however, must depend on the facts proved in this case. It is quite clear that all the property which was, stolen by the dacoits was not recovered from the appellant. We may repeat that clothes, ornaments, cash, etc. were stolen. The only articles that were found with the appellant were a length of muslin (Exh. 2) and a length of charkhana doriya (Exh. 3). The appellant is stated to be a cloth merchant and he may well have acquired these goods as a receiver. It has not been shown that in the village in which the appellant lived it was known that a dacoity had taken place and goods had been stolen in the dacoity.

On the facts of this case it seems to us that the, only legitimate presumption to be drawn is that the appellant knew that the, goods were stolen but he did not know that they were stolen in a dacoity. The appellant, therefore, can only be convicted under s. 411, I.P.C. In this connection we may refer to a decision of the Rajas- than High Court in Bhurgiri v. The State(1) (Wanchoo, C.J., and Dave, J.). Wanchoo, C.J., after holding that the recovery of ornaments from Bhurgiri had been established, observed :

> "The next question is whether on this evidence Bhurgiri can be convicted for dacoity. The, recovery took place five days after the dacoity. It is not impossible that during that period the property might have passed from the dacoits to a receiver. Under these circumstances, we are of opinion that it would not be safe to convict Bhurgiri of dacoity on the evidence of this recovery alone. It would be more proper to convict him as a guilty receiver.
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> Then the question arises whether he should be convicted under section 411 or 412, I.P.C. So far as section 411 is concerned, he is clearly guilty under that section. The presumption under section 114 applies, and we can safely presume that he is a guilty receiver of stolen property particularly when we find that the property was kept in the

> Bara, and not at his own house. He must have, had reason to believe that it was stolen when he received the property, and that is why he left it in the Bara. But we feel that it would not be proper to convict him under section 412 because that section requires that the receiver should know or have reason (1) I.L.R. [1954] Rai. 476, 482-83.

to believe that the property had been transferred by the commission of dacoity. The prosecution, in our opinion has to show something more than the mere possession of stolen goods for a conviction under section

412. If the prosecution is only able to show mere possession, the proper section to use is

411."

In the result the appeal is allowed and the appellant convicted under s.411,I.P.C., instead of s. 396, I.P.C.,and sentenced to undergo rigorous imprisonment for three years.

R.K.P.S Appeal allowed.