Achyut Das vs State Of Assam on 29 October, 1993

Equivalent citations: 1994 AIR 968, 1994 SCC (1) 387, (1994) 7 OCR 471, AIR 1994 SUPREME COURT 968, 1994 (1) SCC 387, 1994 AIR SCW 873, 1994 CRIAPPR(SC) 35, 1994 SCC(CRI) 526, 1993 JT (SUPP) 156, 1994 ALLAPPCAS (CRI) 39, 1994 CALCRILR 76, 1994 (1) UJ (SC) 113, 1994 UJ(SC) 1 113, (1993) 3 ALLCRILR 802, 1993 CHANDLR(CIV&CRI) 460, (1994) 3 RECCRIR 501, (1995) 1 CHANDCRIC 198, (1995) 2 ALLCRILR 188, (1998) 2 FAC 300, (1994) 2 CRICJ 300, (1993) 3 ALLCRILR 496, (1993) 3 CRIMES 1107, (1994) 1 EASTCRIC 449, (1994) 2 CHANDCRIC 83, (1994) 2 CRICJ 690, (1994) 3 CURCRIR 600

Author: G.N. Ray

Bench: G.N. Ray

PETITIONER:
ACHYUT DAS

Vs.

RESPONDENT:
STATE OF ASSAM

DATE OF JUDGMENT29/10/1993

BENCH:
REDDY, K. JAYACHANDRA (J)
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REDDY, K. JAYACHANDRA (J)
RAY, G.N. (J)

CITATION:
1994 AIR 968 1994 SCC (1) 387
JT 1993 Supl. 156 1993 SCALE (4)308

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J.- Leave granted.

2. The two appellants along with seven others were tried for an offence punishable under Sections 395 read with 397 IPC. The gravamen of the charge against them was that on the intervening night of July 29/30, 1979, the nine accused persons armed with lethal weapons attacked the persons who were travelling in a truck and robbed them of ornaments, cash and wrist watches. A case was registered and the police searched the houses of the two appellants and two others and recovered the alleged stolen articles. The trial court, however, acquitted five of the accused of all the charges but convicted the two appellants and two others under Section 412 IPC and sentenced each of them to undergo RI for seven years and to pay a fine of Rs 1,000 in default of payment of which to further undergo RI for three months. The four convicted accused preferred an appeal to the High Court. The High Court acquitted the other two accused but confirmed the conviction of the two appellants and reduced the sentence to 1 1/2 years' RI and the sentence of fine was also reduced to Rs 500 in default of payment of which to further undergo RI for 10 days. Hence the present appeal by the two convicted accused.

3. The only question that falls for consideration is whether an offence punishable under Section 412 is squarely made out? The dacoity which took place on the intervening night of July 29/30, 1979 is not in doubt. The stolen articles were recovered from the possession of the appellants during the investigation. Besides the evidence of the official witnesses there is evidence of PW 8, who stated that he purchased these articles from the appellants. The appellants could not give any explanation as to how they came into + From the Judgment and Order dated May 14, 1993 of the Gauhati High Court in Crl. A. No. 37 of 1985 possession of the stolen property. But the question is whether it can be said that the appellants knew that those articles were stolen in dacoity? The prosecution has to prove such knowledge since that is an essential ingredient of Section 412 as compared to the ingredient of Section 411. In the instant case there is no material to come to the conclusion that the appellants knew or had reason to believe that the articles were stolen in the course of the dacoity. Therefore the only presumption that can be drawn against them was that they knew that the articles were stolen in which case the offence made out would be one punishable under Section 411 IPC. Accordingly the conviction of the appellants under Section 412 IPC and sentence of 1 1/2 years' RI thereunder are set aside. Instead they are convicted under Section 411 IPC and sentenced to undergo three months' RI. The sentence of fine with default clause is however, confirmed. Accordingly the appeal is partly allowed.