Mohd. Ilyas vs The State on 26 May, 1950

Equivalent citations: AIR1950ALL615, AIR 1950 ALLAHABAD 615

ORDER

Misra, J.

1. The applicant, Mohammad Ilyas, was convicted by a first class Judicial Magistrate of Partabgarh of an offence under Section 411, Penal Code, and sentenced to undergo rigorous imprisonment for nine months. The decision was affirmed by the Additional Civil and Sessions Judge, Partabgarh, and the accused has coma up to this Court in revision. The case which the Courts below have found against him is that he dishonestly retained six watches which were stolen on the night between 8th and 9th November 1949, from the shop of Abdul Raoof knowing or having reason to believe that they were stolen property.

2. The report in respect of the theft was lodged by Abdul Raoof on 9th November 1949, at Partabgarh Kotwali. The evidence indicated that on 16th November 1949, Vidyadhar, head constable, who was in charge of the MacAndrew Ganj outpost was informed by the complainant that Muhammad Ilyas was trying to dispose of a watch at the house of a prostitute in Partabgarh at an inordinately low pries. He, therefore, proceeded to the house and took possession of the watch (EX. l) and though the accused protested that it belonged to him, he effected Ilyas's arrest.

3. As regards Ex. 1, it was eventually found that it was not part of the stolen property. It was proved, however by reliable evidence: (1) That Ilyas while under arrest disclosed to Vidyadhar that he had kept six watches with one Narendra Bahadur at the latter's hotel; (2) That he accompanied the head constable to the place and on reaching there, asked Narendra Bahadur to produce the watches; and (3) That a bundle containing watches was brought out by Narendra Bahadur in consequence of Ilyas's request and handed over to the head constable.

4. Two contentions are urged on behalf of the applicant: (l) That since the statement of Ilyas that he had kept the watches with Narendra Bahadur did not lead to the discovery, that statement could not be proved on account of the prohibition against such a procedure contained in Section 27, Evidence Act, the suggestion of the applicant's learned counsel being that if the above statement is excluded from evidence, the recovery of the bundle containing the watches would be recovery from the possession of Narendra Bahadur and not from the possession of the applicant, and (2) That the identification proceedings in respect of the watches were defective and the Courts below, therefore, were not justified in holding that the watches recovered by Yidyadhar were the watches which were stolen from the shop of Abdul Raoof on the night between the 8th and 9th November 1949.

5. So far as the first contention is concerned, it is now authoritatively laid down by the Privy Council in Pulukuri Kotayya v. Emperor, 74 I. A. 65: (A. I. R. (34) 1947 P. C. 67 : 48 Cr. L. J. 538) that the

words' fact discovered' occurring in Section 27, Evidence Act, embrace the place from which the object is produced, the knowledge of the accused as to this and the information given must relate distinctly to this fact. The argument that the aforesaid words are merely descriptive of the physical object produced was repelled and the view expressed in Sukkan v. Emperor, 10 Lab. 283: (A. I. R. (16) 1929 Lah. 344 : 30 Cr. L. J. 414 F.B.) and Ganu Chandra v. Emperor, 56 Bom. 172: (A. I. R. (19) 1932 Bom. 286: 33 Cr. L. 3. 396) was approved of while that taken by the Pull Bench of the Madras High Court in In re. Athappa, Goundan, I. L. R. (1937) Mad. 695 : (A. I. R. (24) 1937 Mad. 618: 38 Cr. L. J. 1027 F.B.) was overruled. In the Fall Bench case of the Lahore High Court to which reference was made by their Lordships, it was held that a statement of the accused that he had pledged the property with the person from whose possession it was subsequently recovered was admissible under Section 27, Evidence Act, while the rest of the statement which constituted a confession and in which it was stated that the accused had removed the karas and had pushed the boy into the well was rejected. In the Bombay case Sir John Beaumont in dealing with Section 27, Evidence Act, remarked :

> "The fact discovered within the meaning of that section must, I think, be some concrete fact to which the information directly relates and In this case such fact is the production of certain property which had been concealed."

According to the learned Judge only that part of the statement of the accused should have been treated as relevant which showed that the accused had hidden the property which they were willing to produce. The case reported in Emperor v. Chokhey, I. L. R. (1937) ALL. 710 : (A. I. R. (24) 1937 ALL. 497 : 38 Cr. L. J. 910) is to the same effect. It lays down that Section 27, permits admission in evidence of the minimum portion of confession made to a police officer or of information given to him by an accused person which might reasonably be held to relate distinctly and positively to the fact discovered and which is necessary to be proved in order to adequately explain such discovery. In that case the accused while in custody of the police officer had stated :

> "I have buried the gun at such and such a place."

and it was held that not only the fact of the discovery of the gun but also the statement of the accused that he had buried the gun in that place was admissible inasmuch as it set the police in motion and led to the discovery of the property. The learned Judge clarified the position in the following words:

> "In the present case the respondent's statement that he had buried the gun related distinctly to the subsequently discovered, and if any words of such statement are to be excluded, there will be nothing left to explain the recovery of the gun. The prosecution cannot be restricted to proving that the respondent said that a gun lay buried at a certain place for that is not what he said. What be said was 'I have buried a gun at such and such a place.' In our opinion, therefore, the respondent's statement to the Sub-Inspector that he himself had buried a gun at a certain place is admissible In evidence, This statement and the fact of the respondent having taken the Sub-Inspector to the place indicated and having unearthed a gun establish his

possession of and control over this weapon."

6. On the principles enunciated in the aforesaid oases, there can be no doubt that the statement of the accused that he had kept the watches with Narendra was admissible and that, in the eye of law, Ilyas was in possession of and control over the watches which were recovered by Vidyadhar.

7. The second contention is equally futile. It would seem that at the time of the recovery of the bundle from Narendra Bahadur, Abdul Raoof was also present. It is urged on the strength of this fact that he had an opportunity of seeing the watches after their recovery and noticing that four of them were without minute or hour hands and two without machinery and that it was not difficult for him in these circumstances to identify the watches at the test identification or before the trial Court. The Courts below are unanimous that the watches recovered were those which were stolen from Abdul Raoof's shop. There were no irregularities in the test identification proceedings or in the proceedings in that behalf carried out in the trial Court. It is obvious that the evaluation of the evidence of identity by the Courts below was neither improper nor unjust. I am not prepared to hold that because the witness, Abdul Raoof was present at the time of the recovery of the watches at Narendra Hotel, the finding as to identity of the property is legally defective. I may add in this connection that Abdul Raoof has not been shown to have any ill-feeling against Ilyas. There was the evidence of P. W. 3 to the effect that the watches which were recovered were from the complainant's shop and were stolen in the course of the burglary committed on the night between 8th and 9th November 1949. It is not without significance that the applicant does not claim that the aforesaid watches belonged to him.

8. I dismiss the revision. The applicant Mohammad Ilyas is on bail. Ha must surrender for serving out his sentence. The bail bonds are cancelled.