Horilal vs State Through Parmoon on 11 September, 1951

Equivalent citations: AIR1953ALL572, AIR 1953 ALLAHABAD 572

JUDGMENT

Bind Basni Prasad, J.

1. This is a petition in revision against an order acquitting Parmu the opposite party from the charge under Section 411, Penal Code. I have arrived at the conclusion that the petition must be allowed. The learned Additional Sessions Judge has taken an entirely erroneous view of the law.

2. Briefly the facts are that on the night between 18 and 19-9-1949, a theft by house-breaking took place in the house of one Hori Lal in the village of Purwa Pita Ram. He made a report at the police station at 9 a.m. on the following morning. The total value of the articles alleged to have been stolen was stated to be Rs. 1,400/-. He named certain persons in the report against whom he had suspicion. Parmu, opposite party, was not mentioned in it. At the trial of the case evidence was led to prove that on 22-9-1949, in the course of the investigation, Parmu, opposite party, took the Station Officer, Ibne Ali, to his field and there he dug out a silver Chhail Churi which was one of the articles stolen from the house of Hori Lal, complainant. On the basis of this evidence the learned trying Magistrate convicted Parmu and sentenced him to four months' rigorous imprisonment. In appeal the learned Additional Sessions Judge held that the recovery of the Chhail Churi did not fasten the guilt upon Parmu and so he acquitted Parmu of the charge under Section 411, Penal Code but directed that the Chhail Churi shall be delivered to Hori Lal.

3. It may be noted that the learned Additional Sessions Judge had no doubt in his mind about the fact that the accused handed over the Chhail Churi after digging it out from his 'mukka' field. He observes :

> "It has been satisfactorily proved from the testimony of S. O. Ibne Ali, P. W. 4 and the recovery witnesses, Khyali Ram P. W. 5 and Mangali P. W. 7 that the accused had handed over a Chhail Churi after digging it out from the 'mukka' field on the fourth day of the occurrence of theft by house-breaking; and from the testimony of Hori Lal P. W. 1 and his father Lalta Prasad P. W. 2 and uncle Mani Ram P. W. 3 that the Chhail Churi in question belonged to him and had been lost in the theft."

Relying, however, upon -- Hata v. Emperor', AIR 1943 Lah 4 (A) he held that no presumption of the offence under Section 411, Penal Code arises against Parmu under illust. (a) of Section 114, Evidence Act. The view taken by the learned Additional Sessions Judge is erroneous. The leading authority upon this point is the Division Bench case of this Court, -- 'Queen Empress v. Gobinda', 17 All 576 (B). It was a case which was referred by a Single Judge to the Division Bench as he felt some doubt in regard to certain earlier Single Judge decisions of this Court. In that case some articles were

stolen and some of these were found in the house of one Dhankua and some in his field. He gave no 'reasonable explanation how he came to be in possession of the articles found in his house. His conviction under Section 411, Penal Code, was maintained. There was another accused Gobinda in that case. Against him the evidence was that he pointed out a place in the field of another man in which some of the stolen articles were found. There was no other evidence against him. Their Lordships, Edge C. J., and Banerji J., observed :

> "The mere fact that a person points out a place where stolen property is concealed, if that place is not in his own house or in his own field but is in the field of another man, is not sufficient, in our opinion, to entitle the Court to find that the person who pointed out the stolen article had received it, or retained it, knowing it to be stolen. There must, to support a conviction in such a case, be some evidence which suggests that the accused himself concealed the article in the place where it was found. It is not sufficient for a conviction that the accused pointed out the stolen article, if it is left doubtful whether the accused or some other person concealed the stolen article, or that the accused obtained in some other way information that the stolen property was in the place where it was found."

Hence Gobinda's appeal was allowed and he was acquitted of the charge under Section 411, Penal Code. This view was followed in Oudh in --'Mata Prasad v. Emperor', AIR 1943' Oudh 298 (C). In that case Mata Prasad was convicted under Section 412, Penal Code on the solitary evidence that a silver 'kara' was recovered from underneath a bin kept in the kothri of Mata Prasad's house. There was another accused Ram Autar in that case who took the Sub-Inspector & the party to a 'Ghura' from where he dug out one small bundle. From inside this bundle a pair of stolen silver 'karas' were recovered and handed over to the Sub-Inspector. This evidence was held as insufficient for the conviction of Ram Autar. Relying upon --

'17 All 576' (B) Ghulara Hasan, J., held that where the stolen article is recovered from a place which is not the house or the field of the accused a presumption of the offence under Section 411, Penal Code does not arise. Ram Autar was, therefore, acquitted. Several other cases in support of this view are also referred to in this ruling.

4. The view taken by the Single Judge of the Lahore High Court in -- 'Hata v. Emperor', AIR 1943 Lah 4 (A) is in direct conflict with the view expressed by this Court in -- '17 All 576' (B) and --'AIR 1943 Oudh 298' (C). The learned Additional Sessions Judge should have followed the view taken by this Court. I am bound by the decision in the Division Bench case of -- '17 All 576' (B). The learned Additional Sessions Judge has made a wrong approach to the case.

5. The question now remains as to what order should be passed in this revision. In the Pull Bench case of -- 'Queen Empress v.

Balwant', 9 All 134 (D) it was held:

> "The High Court has power under Section 439, Criminal P. C. to revise an order of acquittal, though not to convert a finding of acquittal into one of conviction. In reference to orders of acquittal passed by a Court of Session in appeal, the High Court may, under Section 439, reverse such order and direct a retrial of the appeal, the proper tribunal to conduct which is the Sessions Court of appeal, or such other Court of equal jurisdiction as the High Court may entrust, under Section 526 of the Code, with the trial of the appeal."

6. Learned counsel for Parmu accused has contended that the finding of the learned Additional Sessions Judge about the recovery of the Chhail Churi is wrong. That is a question which it will be open to Parmu to contend before the learned Additional Sessions Judge when the appeal is reheard by him. It would not be proper that the appeal be reheard by the same learned Additional Sessions Judge who decided the case which is in revision before us. I understand that Shri Khadim Ali has been transferred from Etawah. It would be proper if this appeal is heard by the 1st Additional Sessions Judge of Etawah in the light of the observations made above.

7. The revision is allowed. The order of acquittal passed by the learned 2nd Additional Sessions Judge of Etawah is set aside and the appeal is sent back for re-hearing, in the light of the observations made above, by the 1st Temporary Civil and Sessions Judge of Etawah. The record shall be sent to the Court concerned, without any delay.