

Ahibaran Singh And Anr. vs The State on 10 October, 1952

Equivalent citations: AIR1953ALL493, AIR 1953 ALLAHABAD 493

ORDER

Kaul, J.

1. Ahibaran Singh and Gokaran were convicted by a Magistrate of the first Class, Hardoi, under Section 411, Penal Code, and sentenced to nine months' rigorous imprisonment each. An appeal preferred by them was dismissed by the learned Sessions Judge of Hardoi. They now come up in revision.

2. The prosecution story as held established at the trial was as follows:

3. Two consignments of 'Kattha' were despatched from Najibabad by the firm Babu Ram Suresh Chander. One of these consignments was intended for Shahganj and the other for Jaunpur. The consignment for Jaunpur consisted of two packages weighing 2 mds., 17 seers while that intended for Shahganj consisted of five packages weighing six maunds. The railway man at the west Cabin of Karwa Station noticed on the night between the 28th and 29th April, 50, that the door of one of the vans in the goods train, which had passed his cabin, was open. He informed the Station Master who got into touch with the next station. When the train stopped at Balamau, about three stations from Karwa the packages in the van, whereof the door was found open, were checked. There was a shortage in the weight in each of these consignments. The next morning the two present petitioners were found selling kattha in Hardoi railway bazar. While the two petitioners were engaged in settling the rate with Ram Ratan a dealer in 'Kattha' in Hardoi Railway Station bazar, a constable came and interrogated them. They gave some explanation but when questioned further, they attempted to run away and were caught. They were in due course sent up for trial.

4. Ahibaran Singh's defence was that the whole quantity of kattha which had been taken to Ram Ratan's shop belonged to him and that Gokaran had nothing to do with the same. Gokaran also pleaded not guilty. His case was that he knew Ahibaran Singh & as he met him in the market he accompanied him to the shop of Ram Ratan to whom Ahibaran Singh wanted to sell the kattha. By way of explanation of his presence at the bazar, he said that he had been there to purchase 'bhoosa' for some Court Inspector,

5. Evidence was led on behalf of the prosecution to prove that the theft of 'Kattha' despatched by the firm Babu Ram Suresh Chandra took place on the night between the 28th and 29th April 1950 at some place between Rosa and Karwa railway station and that the Kattha which the accused offered to sell to Ram Ratan was manufactured by the firm Babu Ram Suresh Chandra. Reliance was further placed on the conduct of the accused when they attempted to run away on being questioned by the police. On behalf of Ahibaran Singh there is produced an invoice purporting to be written on a form

of invoices used by a firm at Kanpur known as firm Narain Das Chhotey Lal. Ahibaran Singh called the 'munib' of that firm to prove the invoice.

The 'munib's' evidence, however, did not go further than this that the form on which the invoice was written was similar to that used in his firm. He was clear that it was not written by him nor was he in a position to say who had written it. On a consideration of the evidence on record the learned Magistrate came to the conclusion that the 'kattha' found in possession of the accused was stolen property and that they had not been able to furnish any reasonable explanation to account for their possession of the same. He accordingly held that the guilt had been brought home to the accused, and convicted and sentenced them as already stated. The learned Sessions Judge took the same view.

6. It was strenuously argued by their learned Counsel Mr. Ram Asrey Misra that the approach of the two Courts below to the question that was before them was not correct. He contended that the burden of proof in a criminal case always lies on the prosecution. It never shifts to the accused, and even if Ahibaran Singh was unable to prove definitely that the Kattha which he had offered to sell to Ram Ratan was purchased by him from Kanpur, it does not necessarily lead to the inference that his defence was false; nor can it relieve the prosecution of their duty to prove (1) that the property in possession of the accused was stolen property, and (2) that they had come into possession or retained its possession with knowledge that it was stolen property.

The law as propounded by the learned Counsel for the petitioners is unexceptionable.

It is true that in a case under Section 411 it is not upon the accused to prove how he came to possess the property which is said to be stolen property. The elementary principle of criminal law, that in all cases the burden of proof lies upon the prosecution to bring the guilt home to the accused, does not admit of any exception. The only question is whether on certain material it can be properly held by the Court that the accused is proved to have been in possession of property which was stolen property and that he had come into possession of such property or retained such property with the knowledge that it was stolen property. According to our Evidence Act, a fact is said to be proved when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought under the circumstance of the particular case to act upon the supposition that it exists.

One of the essential ingredients of an offence under Section 411 is knowledge of the accused that the property which is said to be stolen property came into his possession with the knowledge that it was stolen property or that he retained it with such knowledge. Ordinarily there can be no direct proof of knowledge of a fact by any person. This is almost invariably inferred from his conduct and the surrounding circumstances. In the present case, we find it established that the kattha which the petitioners took for sale to Ram Ratan was manufactured by the firm Babu Ram Suresh Chandra. There is definite evidence of Ram Chandra brother of Suresh Chandra, that having seen the kattha he could say from its quality, texture, and shape of the cubes or lumps that it was manufactured by his firm. He said that the texture, variety, quality and shape of the cubes of the kattha prepared by this firm was different from that prepared by any other firm.

Thus there can be no doubt that this was kattha prepared by the firm Babu Ram Suresh Chandra, it is further established from the two consignments of kattha despatched from Najibabad one for Shahganj and the other for Jaunpur that various quantities were stolen on the night between the 28th and 29th of April 1950 between Rosa and Karwa railway stations. We further find that the very next morning these two persons were found selling large quantities of kattha to Ram Ratan in Hardoi market. Karwa railway station is only six or seven miles from Hardoi. When questioned by the constable, the accused gave some explanation but when pressed further they attempted to run away.

The explanation offered by Ahibaram Singh that it was kattha purchased by him from the firm Narain Dass Chhotey Lal of Kanpur is not established. Not only it is not proved but significantly we find that this part of the case viz., that Ahibaran Singh purchased the kattha, which he was found selling to Ram Ratan from Kanpur was not disclosed till a very late stage. He was asked to reply to the charge framed against him on 28-4-1951. On that day, he contended himself only with saying that the kattha belonged to him. He was again examined on 9-5-1951. Even on that day he did not say where he bought this kattha.

It was only twenty days after on 29-5-1951, that the court was apprised for the first time by the production of what purported to be an invoice of the firm Narain Das Chhotey Lal of Kanpur that the kattha was purchased from that firm. On these facts the learned Magistrate held that the defence put forward by the accused was false and that the explanation furnished by him could not be called a reasonable explanation. He appears to have been materially influenced by two factors -- the conduct of the accused when interrogated by the police and the inordinate delay in his coming forward with his story that he purchased the kattha from Kanpur.

It cannot be said that these were factors which should not influence his judgment. An inference in a legal trial is drawn from a long chain of facts. It is not essential that every one of these facts should by itself be sufficient to establish the guilt, nor can we expect that every one of these facts taken individually would lead to one conclusion. May be that some facts in a certain setting may lead to one conclusion while in another setting they may lead to a different conclusion altogether. Having regard to all the circumstances, it cannot be said that the courts below came to an erroneous conclusion. What is required, even in criminal cases, is not absolute certainty. All that is required is material whereon the court can reasonably act upon the supposition that a fact exists.

7. With regard to Gokaran it is sufficient to say that he did not lead any evidence to support the explanation given by him that he came to the railway station bazar to buy bhusa and had nothing to do with the kattha that was being sold to Ram Ratan. The witnesses railed for the prosecution are definite that both these persons brought the kattha and that both of them were settling the terms with Ram Ratan. I am satisfied that the guilt is satisfactorily established against both the accused.

8. It is argued by Mr, Ram Asrey Misra that the sentence errs on the side of severity. I am not at all impressed by this argument. Cases under Section 411, especially when the property found is property stolen from a railway train, call for deterrent punishment and I am not satisfied that the sentence of nine months rigorous imprisonment errs on the side of severity.

9. The application is dismissed. The accused are on bail. They shall surrender thereto and serve out the un-expired portion of the sent once.