Pulpil Singh vs The State on 24 August, 1955

Equivalent citations: AIR1955ALL696, 1955CRILJ1553, AIR 1955 ALLAHABAD 696, ILR (1957) 1 ALL 1

ORDER

Roy, J.

1. This is an application in revision by Pulpil Singh against an order of the learned Sessions Judge of Basti by which he confirmed an order of the learned Magistrate of first class convicting and sentencing the applicant under Section 411, I. P. C. to 18 months' rigorous imprisonment and to a fine of Rs. 200/- or in default to a further three months' simple imprisonment.

2. Certain bales of cloth were booked from Kanpur to Ghazipur city. The wagon containing those bales left Kanpur on 10-6-1951, The train reached Maghar Station on 11-6-1951 and on the verification by the railway authorities it was found that 32 bales were intact and one bale had been, tampered with from which certain articles were removed. The seal of the wagon was found damaged. When the wagon reached Lucknow five more bales were found missing. That was not the end of the matter. When the wagon reached Gorakhpur four more bales were found missing, Report was made with the police and investigation was taken up.

During the course of the investigation certain articles were recovered from Lallan Singh and certain other articles together with the gunny forming part of the outer covering of one of the bales were recovered from Pulpil Singh, applicant. Both these persons are residents of village Katasai within police circle Paikaulia. Certain more articles were recovered from one Hidayat Ullah alias Mangrey Darzi of Gour, and still certain other articles were recovered from one Gajadhar Ahir of village Masjidya within police circle Kotwali.

All these articles were the contents of one bale that had been stolen from the wagon. The gunny bag that was recovered from Pulpil Singh bore the railway mark that had been assigned to it at the time when the consignment had been booked. Lallan Singh died on 27-1-1952, so the proceedings against him abated. The other three persons were jointly tried and charged under Section 411, I. P. C. The learned Magistrate acquitted Hidayat Ullah alias Mangrey and Gajadhar and convicted the applicant under Section 411 and sentenced him in the manner stated above.

The defence of the applicant was that the cloth and the gunny bag that bad been recovered from his possession came into his possession after he had purchased them from a hawker of cloth who hailed from Punjab. His contention was that he was not the receiver of any stolen property and that he was in bona fide possession of the same.

The learned Magistrate repelled his plea on the ground that the prosecution evidence was clear, cogent and consistent and that the presumption arising under Section 114, Evidence Act must be drawn against the applicant, more so because he did not produce the Punjabi hawker. "Against his conviction and sentence, the applicant preferred an appeal and the learned Sessions Judge in a very brief judgment upheld the conviction & sentence and dismissed the appeal. In revision before this Court three points have been urged.

3. Firstly: that a joint trial of the applicant with Hidayat Ullah and Gajadhar was against the provisions of Section 239(f), Criminal P. C. and was therefore illegal. Secondly: that no presumption under Section 114, Evidence Act could be drawn against the applicant; and the applicant's contention that he was in bona fide possession of all the articles should have been accepted. Thirdly: that in any event the sentence awarded is severe.

4. On the first question the evidence that was produced in this case proved positively that the articles that had been recovered from the four persons formed part of one single bale that had been stolen from out of the consignment. In fact the finding of the learned Sessions Judge was to the same effect. The articles that were recovered from the applicant as also from the three others mentioned above obviously formed part of one single offence of theft.

Section 239(f), Criminal P. C. lays down that persons accused of offerees under Section 411, Penal Code in respect of stolen property the possession of which has been transferred by one offence may be charged and tried together.

It has been contended by learned counsel for the applicant that the words "the possession of which has been transferred by one offence" would mean that possession has been transferred to these four persons in one single transaction, and since there was no evidence to substantiate it the trial was defective. The phrase "the possession of which has been transferred by one offence" has a reference to the original theft of the stolen property.

Consequently several persons can be jointly tried under Section 411, Penal Code, that is to say with regard to the receiving of stolen property, where there is evidence to show that the property was originally stolen on one occasion. This was the view taken by a Division Bench of the Bombay High Court in -- 'Emperor v. Lakha Amra', AIR 1932 Bom 201 (A).

The same view had been taken by the Patna High Court in an earlier decision in -- 'Mt. Guljania v. Emperor', AIR 1928 Pat 38 (B). There it was held with reference to Section 239(f), Criminal P. C. and Section 411, Penal Code that a joint trial of several persons for the offence of. receiving stolen property is legal provided the articles are stolen in the course of one and the same theft. This Patna decision had been followed by the Oudh Court in ---'Shakur v. Emperor', AIR 1935 Oudh 475 (C).

The Bombay and the Oudh view had been approved by the Calcutta High Court in -- 'Ram Khelawan v. Emperor'. AIR 1938 Cal 525 (D) at p. 526; where it was observed that as to the offence of receiving stolen property the possession of which has been transferred by one offence, it means property which constitutes the proceeds of one single theft.

In the present case, since the articles that were recovered from Pulpil Singh, Lallan Singh, Hidayat Ullah and Gajadhar formed part of one single act of theft as these articles, were contained in the same bale, Pulpil Singh could be tried jointly with the other two in view of the provisions of Section 239 (f), Criminal P. C. for an offence under Section 411, I. P. C. The property was stolen originally at one occasion. The property had been received by Pulpil Singh under circumstances which would import to him the knowledge that it was stolen property.

In fact Pulpil Singh was not found merely with possession of some of the articles of cloth inside the bale but also with the outer covering of the bale on which the distinctive mark of the railway that had been put at the time of its consignment. I am, therefore, of the opinion that the trial did not contravene the provisions of Section 239(f), Criminal P. C. and was therefore not bad.

5. Coming now to the second point, it has been urged on behalf of the applicant that no presumption should have been drawn against the applicant on his failure to produce the hawker from whom he contended he had purchased those articles. It has further been urged that an explanation had been offered by the applicant as to now he came by those articles and that that explanation was reasonable and ought to have been accepted. I am unable to agree with this proposition, having regard to the facts and circumstances of the present case. The theft was committed from the train on 11-6-1951. The recovery had been made from the applicant on 16-6-1951. Illustration (a) of Section 114, Evidence Act says that the Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.

The question in the present case, therefore, is: has the applicant accounted for his possession so as to dislodge the presumption which the Court might make under Illus. (a) of Section 114, Evidence Act. In my opinion the explanation that had been offered by the applicant, in the absence of the hawker from whom he alleged he had purchased the articles, was much too puerile to bear acceptance. It was a false explanation which did not admit of any scrutiny.

The words "unless he can account for his possession" in Illus. (a) of Section 114, Evidence Act do not mean that any sort of explanation in regard to possession, would be acceptable. The explanation must be a reasonable explanation. The Court of course is not bound to draw a presumption under Section 114, Illus. (a). It is at the option of the Court to draw it; but it does not in any way shift the burden of proof to the accused.

The words "can account for his possession" do not mean that the accused must prove it positively that he had received the property in the manner indicated by him. If the explanation given is not inherently improbable or palpably false and the Court trying the case finds it to be reasonably true, the adverse presumption is deemed to have been rebutted. But where, as in the present case, the explanation given, was inherently improbable and palpably false the presumption arising under Illus. (a) of Section 114, Evidence Act was not in any way rebutted.

In my opinion the trial Court made a correct appreciation of the evidence, that was led on behalf of the prosecution in coming to the conclusion that the charge under Section 411, I. P. C. was brought

home to the accused beyond any Shadow of doubt.

6. On the question of sentence I do not think that it errs on the side of severity. Thefts from running trams are getting much too common and when such a theft is detected it cannot lightly be dealt with. Moreover it appears from the record that the applicant has several previous convictions to his credit. Under the circumstances I am not inclined to interfere with the sentence that has been passed in this case.

7. The result, therefore, is that the application is rejected. The applicant is on bail; he must surrender to his bail to serve out the sentence.