Ram Bharosey vs State on 4 January, 1952

Equivalent citations: AIR1952ALL481, AIR 1952 ALLAHABAD 481

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This is a revision by one Ram Bharosey who has been convicted for an offence punishable under Section 414, Penal Code, and sentenced to one year's rigorous imprisonment.

2. The facts found by the lower appellate Court on which the applicant has been convicted are that a calf belonging to Mithulal was lost by him on 4th September 1949. On 5th September 1949 it was sold in the weekly market by Ram Bharosey applicant to one Habibullah for a sum of Rs. 28. It was later recovered from the house of Habibullah on 6th September 1949. The lower Court has also found that Ram Bharosey failed to give any satisfactory explanation of being in possession of this calf. The explanation which Ram Bharosey gave was that the calf belonged to him, but this plea of Ram Bharosey has been disbelieved by the appellate Court and has been held to be false. These findings given by the lower appellate Court are findings of fact and the learned counsel for the applicant has not been able to show that any of them are so wrong and perverse as to require being upset. The ownership of the calf by Mithulal was held by the appellate Court to be proved from oral evidence as well as two circumstances. One circumstance was that the calf, when let loose, went to the house of the complainant, Mitthulal, and started licking the udders of the mother, cow. Learned counsel for the applicant pointed out that at one stage Mithulal had stated that he and others had driven the calf to his house but it appears that this statement had been made by Mithulal under some confusion. The trial Court seems to have realised that there was some ambiguity and, therefore, after the cross-examination of Mithulal, the Court itself put some questions in which it was clearly elicited that no one had led the calf to Mithulal's house and that the complainant and others had merely followed the calf, as it went to his house. There was therefore, nothing wrong in the lower Court taking notice of the fact that the calf when let loose went to the house of the complainant and started licking the udders of her mother.

3. Learned counsel for the applicant argued that the conduct of an animal was not admissible in evidence under any provisions of the Evidence Act and, therefore, it should not have been taken into account at all. In support of this proposition the learned counsel referred to a case of Said Ali Dost

Mohammad v. Emperor, A. I. R. (27) 1940 Pesh, 47 decided by Almond J. C. In my opinion, the evidence about the conduct of an animal can be taken into account under Section 114, Evidence Act, as being covered by the words "course of natural events". The conduct of an animal is naturally guided by its instincts and such conduct can certainly be taken into account. The case dealt with by the learned Judicial Commissioner was slightly different as it dealt with the conduct of a dog which had been specially trained. The actions of the dog may not be considered to be its natural conduct and in such a case the conduct may or may not be admissible in evidence. In the present case, the conduct of the calf in going to the house of its master and in starting to lick the udders of its mother was obviously natural conduct and can, therefore, be taken into account.

4. The second circumstance which has been relied upon was the inadequacy of the price for which the applicant had sold the calf to Habibullah. The learned counsel argued that the inference about this circumstance was based on a misreading of the evidence. There is, however, evidence on the record to show that the calf at this time would be worth much more than Rs. 28 and, in the circumstances, it cannot be said that the learned Judge's finding on this point was wrong or perverse. Consequently, even if the first circumstance be ignored as being based on inadmissible evidence, the oral evidence taken together with this one circumstance alone would be sufficient to hold that the calf belonged to Mithulal, complainant.

5. Another point that was argued by the learned counsel for the applicant was that in this case there was no evidence that Ram Bharosey applicant knew the calf to be stolen property when he sold it. There is, however, the circumstance that the calf belonged to Mithulal and it was sold by Ram Bharosey applicant who is unable to give any explanation as to how he came to be in possession of it. His claim that it belonged to him and had never belonged to Mithulal was found to be false. There was the second circumstance that the calf was sold only a day after it was stolen and the third circumstance that it was sold for an inadequate price. From these circumstances, an inference that the applicant knew it to be stolen property can be reasonably drawn and, therefore, the lower Court was right in holding that the applicant sold it knowing it to be stolen property.

6. One more question of law has been raised by the learned counsel for the applicant in this case. The only finding given by the appellate Court is that Ram Bharosey sold this calf to Habibullah knowing it to be stolen property. The question is whether such a finding satisfies the requirements of Section 414, Penal Code. Section 414, Penal Code, prescribes for punishment of a person who voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property. The use of the word "assist" would indicate that the person must himself conceal, dispose of or make away with the property but that he should assist some other person in doing it. In the present case the finding is that the applicant himself disposed of the calf. There is no evidence or finding that the applicant assisted some other person in disposing it of. The question, therefore, is whether such a case is covered by the provisions of Section 414, Penal Code.

7. In the alternative, the applicant could be convicted for an offence under Section 411, Penal Code but in this case there is no evidence at all to show that the applicant dishonestly received the calf knowing it to be a, stolen property. In fact, there is no evidence at all to show how he came into

possession of the calf, whether by committing the theft himself or by receiving it from some other person. The case may, however, be brought under Section 411, Penal Code, if it could be held that the disposal of the calf by the applicant necessarily involved retention of the calf by him knowing it to be stolen property. This again is a question which is not quite free from doubt.

8. There does not appear to be any clear case law on these points. Learned counsel has drawn my attention to the case of Emperor v. Balwant Singh, 8 Cr. L. J. 11 (Nag.) decided by the learned Additional Judicial Commissioner of the Central Provinces and to the case of Emperor v. Abdul Ghani, 49 Bom. 878, decided by a Division Bench of the Bombay High Court. In neither of these two cases were these points clearly dealt with. One of the learned Judges, constituting the Bench in the Bombay case did comment that "Section 414, no doubt, requires that the accused should have assisted some one else in the disposal of the property and does not cover the case where a person receives and even disposes of stolen property merely on his own account".

This comment was not really called for, for a proper decision of that case because in that case the finding of fact was that the accused, had in fact assisted another person in the disposal of the stolen property. No question could, therefore, arise as to whether a person who had himself disposed of the property instead of assisting some other person in doing so was or was not liable to be convicted under Section 414, Penal Code.

9. In these circumstances, I consider it desirable to refer the following question of law to a Bench:

> "If it is found that a person sells a property knowing it to be stolen property can he be convicted for an offence punishable under Section 414, Penal Code or Section 411, Penal Code in the absence of any finding about the receipt of that property by such person."

(Note:-- The question of law referred to a Division Bench consisting of Sankar Saran, and Gurtu JJ., coming on for hearing the opinion of the Bench was delivered by Gurtu J.) Gurtu, J.

10. The facts of this case may be briefly stated in order to appreciate the question of law which has been referred to this Bench by the learned single Judge of this Court before whom this case came up in the first instance.

11. One Mittho Lal owned a cow and a calf which was let loose in the mohalla for grazing in the morning. In the evening the cow returned, but the calf did not return. The calf was searched for by Mittho Lal and after a period of three days it was found tied in Kasai Mandi at the house of one Habib Ullah. The police was informed and the Sub-Inspector went to the house of Habib Ullah and untied the calf. The calf was then taken in the direction of the house of Mittho Lal, and it is said that by itself the calf entered the house of Mitthu Lal and went straight to its mother and began to suck the udders of the mother cow.

12. Upon enquiry from Habib Ullah it became apparent that Ram Bharosey applicant had sold the calf in question to Habib Ullah at a public fair for a sum of Rs. 28 only.

13. On these facts Ram Bharosey was charged under Sections 379 and 414, Penal Code.

14. He was acquitted of the charge under Section 379 and in regard to the charge under Section 414 he was convicted. When the case came up before the learned single Judge of this Court, he had certain doubts in regard to whether the accused could be convicted under Section 414, Penal Code, and he had also doubts as to whether Section 411, Penal Code could be applicable.

15. On the facts, as stated above, it is clear that no offence of theft was committed. Theft has been defined in the Indian Penal Code and the definition runs as follows:

> "Whoever intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft."

Illustration (g) to Section 378 is as follows:

> "A finds a ring lying on the high road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property."

The complaint filed by Mittho Lal did not allege that the calf in question had been taken out of Mittho Lal's possession. The calf, when it was taken into possession by Ram Bharosey was grazing. Nobody at that moment had custody of the calf. In the circumstances, and in view of Illustration (g) to Section 378, it is clear that the act of Ram Bharosey in taking the calf into his custody did not amount to an act of theft.

16. A precisely similar case came up before this Court, which is reported in Emperor v. Phul Chand, 52 ALL, 200. The only difference in the facts of that case and the present case was that after the stray bullock had been taken into possession by the person who found it, he negotiated for its sale to a third party, but the third party altered his mind at the last moment and so the stray bullock was not eventually sold out to the third party. In dealing with the question of the guilt of the person who had taken the stray bullock into his possession the learned Judge, who decided the case in 52 ALL. 200, stated that where a person took possession of a bullock which had strayed, but there was no evidence that it was stolen property and he dishonestly retained it, he could be convicted under Section 403 but not under Section 411, Penal Code. It would thus appear that the offence, if any, which Ram Bharosey committed was an offence under Section 403, Penal Code. When a stray animal is found and is taken into possession by the finder thereof, he may, in the first instance, do it with no criminal intent. Thereafter, if he changes his intention with regard to the animal and converts the animal to his own use, he then commits an offence under Section 403, Penal Code. A finder of an article should take some steps in order to ascertain who the true owrer is. If, after he has taken such steps, the true owner is not discovered, then, under certain circumstances the finder may retain the article and in such a case he would not be held guilty of criminal misappropriation, but if he acts with reference to the article found in such a way that the true owner may never discover that it had been picked up by him, then undoubtedly he is attempting to create a situation where

conversion of the goods to his own use would be easy. In such a case naturally the conduct of the finder is criminal conduct and he would come within the ambit of Section 403, Penal Code.

17. The Indian Penal Code protects proprietary rights of an owner. If an owner is deprived of his property without his consent, one of several offences may be committed. The true owner may lose the property by theft or by extortion or by robbery or by criminal misappropriation or criminal breach of trust. Whosoever deprives the true owner of his property by these means will be guilty of one or the other of the offences enumerated above. If the true owner has been deprived of his property by criminal misappropriation and it is in the possession and custody of the person who has so deprived him, then it is not stolen property in the hands of such person but if such person passes the property on to another then the person to whom the property is passed becomes a receiver of stolen property. In other words, for the purpose of the offence of receiving stolen property, property which is stolen or property which is taken by extortion or by robbery or by criminal misappropriation or criminal breach of trust is placed on the same footing by virtue of Section 410. Penal Code.

18. Applying the law to the facts of the present case, it could be said that Habib Ullah to whom the property was sold by Ram Bharosey might be a receiver of stolen property.

19. Neither the thief nor the receiver of the stolen properties can come under Section 414. Section 414 aims at bringing within its scope persons who have not been proved to be in possession of the property. The thief naturally is in possession of the property. So is the receiver of the stolen property. But there may be a third category of persons who never get actual custody or possession of the stolen property and yet assist in its disposal. It is to that category of persons that Section 414, Penal Code, would be applicable To illustrate the matter A steals an article. He desires to dispose of it. He meets a person who is a broker to whom he explains that he has stolen property. He never actually hands over the stolen property to the broker. The broker does not get custody or control of that property but he takes steps to bring the thief into contact with the person who will ultimately receive the stolen goods. Such a person would be guilty under Section 414. Penal Code. Section 414 clearly applies, as its language shows, to persons who voluntarily assist in the selling or disposing of or making away with property. Assistance means that there must be a person assisted. Except in the colloquial sense, a man cannot be said to assist himself. There must be another person whom he assists. In this view of the matter, Ram Bharosey clearly could not be said to have assisted in the disposal of the stolen property. What he actually did was that he disposed of the misappropriated property himself.

We are in respectful agreement with the view in this matter of the Bombay High Court in the case of Emperor v. Abdul Gani, 49 Bom. 878. One of the learned Judges constituting the Bench stated that Section 414, no doubt, requires that the accused should have assisted some one else in the disposal of the property and does not cover a case where a person receives and even disposes of the stolen property merely on his own account. The object of Section 414 clearly is to punish a person who assists in the traffic of stolen goods Section 379. Penal Code, punishes a thief Section 411, punishes a receiver of stolen property and Section 414 punishes a person who assists in the disposal of stolen property. When all these persons are punished then, it may be said that all those who are links in the

chain of crime have been suitably dealt with. In our view the answer to the question referred to this Bench must clearly be in the negative. 20. The question referred was as follows :

> "If it is found that a person sells a property knowing it to be stolen property, can he be convicted for an offence punishable under Section 414, Penal Code, in the abaence of any finding about the receipt of that property by such person?"

As we have pointed out in this case no property was stolen by the applicant nor was any such property received by him.

21. In the course of the referring order the learned single Judge, while accepting the findings of fact recorded by the lower Court that the calf in question was the property of Mittho Lal as alleged by him and not the property of Ram Bharosey has relied upon the conduct of the calf in going to its mother. Section 114, Evidence Act has been invoked in this connection. Section 114 runs as follows :

> "The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

22. It would appear that the section itself does not consider the words "course of natural events" as interchangeable with "animal conduct." If the words are not so interchangeable then it is obvious that the facts relating only to human conduct can be taken into consideration. The conduct of an animal such as a calf does not, in our judgment, appear to be covered by the term "Course of natural events". The learned single Judge himself seems to have been in some doubt in regard to the matter and in discussing the application of Section 114 Evidence Act to the circumstances of the case he undoubtedly found it necessary to interchange the words "natural events" for the word "animal conduct". This is how the learned single Judge has dealt with the matter :

> "In my opinion the evidence about the "conduct of an animal can be taken into account under Section 114 Evidence Act, as being covered by the words course of natural events." The conduct of an animal is naturally guided by its instincts and such conduct can certainly be taken into account."

The leanred single Judge saw the difficulty that was created by the ruling cited as Said Ali Dost Mohammad v. Emperor, A.i.r. (27) 1940 Pesh. 47. In that case, there was a dog who had been specially trained and the conduct of the dog was sought to be taken in evidence under Section 114. It was held that such conduct was inadmissible. In Basu's Law of Evidence, 3rd Edn., 1942, there is a note to the following effect at p. 166 :

> "The conduot and behaviour of blood hounds after being set on the trial of a fugitive criminal cannot be given in evidence to prove that the scent of the accused and the scent of the person who perpetrated the crime which is being investigated are identical."

It is not necessary for us to go into the matter further, because, as the Courts below have indicated, there was evidence, apart from the evidence of the conduct of the animal, from which it could be concluded that the ownership of the calf had been established. Nonetheless we might say that even if the conduct of an animal were admissible under Section 114. it would have to be considered whether such conduct should ordinarily be taken into consideration. So far as the conduct of human beings is concerned, by long observations it can be said that a certain conduct might be motivated by a certain impulse. We are not as yet so familiar with the conduot of animals as to be sure that every time an animal acts in a particular way it must be necessarily assumed that he was motivated by the same impulse. This matter may have to be gone into later in some more appropriate case.

23. One other point was raised before us. The learned single Judge has referred only the point of law which he thought arose in this case. It was submitted that the reference should have been of the entire case. We do not think that in this particular instance we need decide this matter.

24. The answer which we have returned to the question propounded for us clearly negatives the guilt of the accused so far as Section 411 and 414, Penal Code are concerned. The learned single Judge will of course take into consideration whether he will now proceed to convict the accused for the offence of criminal misappropriation or mot.

25. Let this case be, therefore, returned to the learned single Judge with the expression of the aforesaid opinion of this Bench.

[Note:--After the opinion of the Division Bench was received, V. Bhargava J. passed the final order].

Y. Bhargava, J.

26. This revision came up for hearing before me and on 18-12-1950, I referred one question of law for opinion to a Division Bench. The applicant had been convicted under Section 414 Penal Code, and the question was whether his conviction under that section could be upheld and, in the alternative, whether he could be convicted for an offence punishable under Section 411, Penal Code, on the finding that he had sold a bullock, knowing it to be stolen property, in the absence of any finding about the receipt of that bullock by him. The opinion of the Division Bench has been received and the Bench has held that the applicant cannot be convicted either under Section 411 or under Section 414, Penal Code, in the circumstances proved in this case.

The next question, that came up for consideration on the hearing of the revision after return of the finding by the Division Bench, was as to whether the applicant could be convicted for an offence punishable under Section 403, Penal Code. In this case, as was held by me in my order of 18-12-1950, there are findings of fact indicating that a calf belonging to Mithulal complainant was lost on 4-9-1949, and the same calf was sold by the applicant on 5-9-1949, to one Habibullah for a sum of Rs. 28. There was no evidence as to the manner in which the calf was lost so that there was nothing to Indicate that a theft of the calf had been committed. It is, however, clear that the applicant came into possession of that calf and though it did not belong to him, he sold it and thus converted it into his own use. The facts, proved, therefore, clearly establish the offence punishable

under Section 403, Penal Code.

Learned counsel for the applicant cited before me a decision of a learned single Judge of the Madraa High Court In re. Venkataswami, A.i.r. (31) 1944 Mad. 26 in support of the proposition that, in very similar circumstances, the Madras High Court did not convict a person for criminal misappropriation under Section 403, Penal Code, as no charge in respect of that section had been framed against him. The judgment, however, shows that the learned Judge did not take into account the provisions of Sections 236 and 237, Criminal P. C. In the present case, on the facts proved, the applicant could have been charged, in the alternative or in addition to other charges, with the commission of an offence punishable under Section 403, Penal Code. Even though he was not charged for this latter offence, he can now be convicted for that offence under Section 237, Criminal P. C.

27. Consequently, I convert the conviction of the applicant from one under Section 414 to one under Section 403, Penal Code. The sentence already awarded for the offence under Section 414, Penal Code, will now be undergone by the applicant for the offence punishable under Section 403, Penal Code. Learned counsel for the applicant has urged that the sententence should be reduced as the applicant was a young man and had no previous conviction. The offence of misappropriating a head of cattle is not a minor offence. The applicant is not very young. His age was recorded as 25 years by the Magistrate who tried the case. I cannot place any reliance on the affidavit filed on behalf of the applicant by his brother in law, alleging that the applicant's age was only 17 years. In these circumstances, there is no ground for reduction of sentence. The revision is dismissed with the amendment with regard to the offence mentioned above. He must surrender to his bail to undergo the remaining part of his sentence.