

State vs Ganga Sahai on 25 October, 1952

Equivalent citations: AIR1953ALL211, AIR 1953 ALLAHABAD 211

JUDGMENT

Desai, J.

1. This is an appeal by the Uttar Pradesh State against Ganga Sahai who has been acquitted of the charges under Section 379 and 411, I. P. C. by a Magistrate.

2. I have heard Mr. Shri Rama on his motion for admission. He contended that the appeal must be admitted and that the motion for its admission cannot be refused by a single Judge. I do not see any substance in this contention. Under Rule 2 (i) of Chap. 5 of the Rules of the Court, 1952, Vol. I, every motion for the admission of a memorandum of appeal, whether civil or criminal, has to be heard by a Judge sitting alone. There is a distinction between a motion for the admission of an appeal and the hearing of an appeal after admission and issue of notice to the respondent. Certain civil appeals and certain criminal appeals can be disposed of by a Judge sitting alone vide Rule 2 (ii) (vii) etc. but other civil and criminal appeals cannot be disposed of by him. These provisions have reference to those civil and criminal appeals which have been admitted and come up for disposal after the issue of notice. They have no reference to "motions for admission" which are exclusively dealt with under Rule 2 (i). "Motions for admission" of appeals in case in which a sentence of death has been passed are made before a Judge sitting alone though such appeals after being admitted, can be disposed of only by a Bench of two Judges. When there is a motion for admission of an appeal before a Judge sitting alone, he has power not only to admit the appeal and order a notice to be issued, but also to refuse the motion and dismiss the appeal summarily. He can dismiss every appeal summarily regardless of whether he would be competent to dispose of it after admission and issue of notice or not. Under Rule 9 of Chap. 11, a Judge sitting alone is required to admit every first appeal other than an execution first appeal and direct a notice to be issued; in other cases he has been given the right to admit or dismiss the appeal as he thinks fit. That he can dismiss an appeal under Order 41, Rule 11, C. P. C. is made clear by Rule 9 (b) (i). Proviso to Rule 2 of Chap. 18 allows the Bench (which includes a Judge sitting alone) before which a motion is made. for the admission of an appeal to dismiss it summarily under Section 421, Criminal P. C. There is, therefore, no doubt that a Judge sitting alone is competent to dismiss a criminal appeal summarily.

3. Mr. Shri Rama's next contention was that a Government appeal cannot be dismissed summarily. This contention is equally devoid of merit. Every criminal appeal is liable to be dismissed summarily under Section 421 of the Code which makes absolutely no distinction between appeals filed by Government and appeals filed by convicted persons. It is laid down in that section that "on receiving the petition under Section 419 or Section 420, the appellate Court may dismiss the appeal summarily". It was argued that this provision deals with appeals filed under Section 419 and 420 of

the Code and not under Section 417. Sections 419 and 420 lay down the manner in which every appeal by whomsoever and against whatsoever order must be filed. They between themselves exhaust the manners in which a criminal appeal can be filed. Even an appeal filed by Government under Section 417, Cr. P. C. must be filed in the manner prescribed under Section 419. The present appeal has been filed in the manner prescribed in that section. Therefore every appeal is governed by Section 421. Sections 405 to 418 only lay down in what circumstances, by whom, and on what grounds criminal appeals can be filed. They do not at all lay down in what manner the appeals should be filed. As Section 421 refers to the manner in which criminal appeal is filed before the appellate Court, it could only mention Section 419 and 420 and could not possibly mention Section 405 to 418. Section 421 lays down the procedure to be followed by the appellate Court before which an appeal is presented. If it be argued that this section does not apply to appeals filed by Government under Section 417, it can also be argued that it does not apply to appeals filed under any of Section 405 to 415-A; that could be quite absurd. The fact is that every criminal appeal must be entertainable under any of Ss, 405 to 417 and must be presented in the manner prescribed in Section 419 and 420, and the procedure on its being presented before the appellate Court must be governed by Section 421. There is, therefore, no warrant for contending that an appeal filed by Government under Section 417 cannot be dismissed summarily.

4. Coming to the merits, I find that no case was made out against the respondent and the judicial Magistrate quite rightly acquitted him. One Thakur Das lost his mare in the beginning of 1949. It is not known how he lost it, whether it strayed from the place where it was tied or it was stolen by somebody. There is no evidence of anybody who might have seen it being taken away by anybody. It cannot be presumed that it was stolen; it is quite likely that it broke loose itself and strayed away. That mare came in possession of the respondent and he sold it in July 1950 to Naim Singh for Rs. 800/-. Naim Singh sold it for Rs. 400/- to Hem Singh after a few days. It was recovered from Hem Singh's possession on 3-8-50. This is all that is proved in the case. There is no evidence whatsoever to show how and when the respondent obtained possession over the mare except his own statement that had purchased it from Bhura Brahman for Rs. 500/-.

5. The prosecution rested its case against the respondent only on the facts that the mare belonging to Thakur Das was lost in the beginning of 1949 and that it was in the respondent's possession in July 50. These two facts were clearly insufficient to make out any offence against the respondent. It could not be presumed that he stole the mare because not only is there no evidence that the mare was stolen, but also that the respondent stole it was not the only fact to be inferred from his possession. The case rested against him on circumstantial evidence and one of the principles on which the Court acts on circumstantial evidence is that the fact to be inferred from circumstantial evidence must be quite inconsistent with any reasonable hypothesis of the innocence of the accused. If the circumstantial evidence is quite consistent with his innocence, it is not open to the Court to presume his guilt. In that event, the prosecution must produce direct evidence to prove his guilt. Even if the mare had been stolen, since it was found in the respondent's possession about a year later, it could not be presumed that he himself had stolen it. He could not be convicted under Section 411, I. P. C. even, in the absence of proof that he kept it in his possession knowing it to be stolen property. No evidence was led by the prosecution to prove such dishonest knowledge on his part. When the only evidence on the record was his own statement that he had bought it from Bhura

Brahman and there was nothing improbable in that explanation, there was no justification for rejecting it and presuming dishonest knowledge. It could be only a suspicion that he had dishonest knowledge. Just as Naim Singh and Hem Singh had bought the mare from other persons so also could the respondent have bought it from Bhura Brahman. When he offered an explanation which would reasonably be true, the prosecution could not contend that the possession of the respondent should be presumed to be dishonest. The prosecution could not succeed unless it led direct or indirect evidence to prove dishonest knowledge on the respondent's part. No onus lay upon the respondent to prove that he bona fide bought it from Bhura Brahman. That would be nothing less than proving his innocence and he was not required under the law to prove it unless the prosecution had first proved his guilt. If the mare had strayed of its own accord, the respondent might have criminally misappropriated it by taking it into his possession. But merely from the facts that it had strayed and that after about a year it was found in the respondent's possession, it cannot be said for certain that it was criminally misappropriated by the respondent because he could have bought it innocently from Bhura Brahman as stated by him. There was thus no case at all against the respondent and the learned Magistrate rightly acquitted him.

6. In the end Mr. Shri Ila made a fervent appeal that this appeal may not be rejected summarily. I do not consider that this was an appeal which should have been filed by Government. "Government may be expected if not as a matter of law, at any rate of conduct, in litigious matters, to set a very high standard", see -- 'Crown v. Me. Neil, 31 C. L. R. 76. They should not have filed an appeal when there is no evidence at all against the accused. If Government do not like their appeals to be dismissed summarily it is obvious that they should not file appeals which merit this fate. The Court makes no distinction between appellant and appealant.

7. The appeal is dismissed under Section 421, Criminal P. C.