Moinuddin Mozumdar vs State Of Assam on 15 December, 1971

Equivalent citations: AIR1972SC635, 1972CRILJ456, (1972)3SCC322, 1972(4)UJ404(SC), AIR 1972 SUPREME COURT 635, 1972 SCD 228

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Bench: D.G. Palekar, P. Jaganmohan Reddy

JUDGMENT

D.G. Palekar, J.

1. The appellant Moimiddin Mozumdar was convicted by the Assistant Sessions Judge, Silchar of the offence under Section 412 IPC and was sentenced to rigorous imprisonment for a period of five years and a fine of Rs. 1,000/-. In appeal to the High Court of Assam and Nagaland the conviction was maintained but the sentence was reduced to rigorous imprisonment for one year and the fine was remitted.

2. The case arose out of a dacoity which took place at midnight of 1-3-1965 in the house of P.W. 1 Churamani Nath of village Nig-Katigora in the District of Cachar when ornaments and other articles worth about Rs. 1,300/-including a studio camera were stolen. Along with the appellant who was accused No. 1, two other Jamiruddin and Samiruddin were put up for trial on a charge under Section 395 Indian Penal Code. The other two have been acquitted and we are now concerned only with the appellant. During the course of the investigation the camera which was one of the stolen properties in the dacoity was traced to the appellant and seized by the police on 5-3-1966. The camera belonged to Udoy Shankar, P.W. 2 a professional photographer. Udoy Shanker is the son-in-law of the aforesaid Churamani Nath, P.W. 1 and was staying with him that night. He had the camera with him at the time. It would appear from the judgment of the Trial Court that the appellant had been identified by P.W. 3 Charu Prabha Nath, the son of Churamajbi Nath, as one of the dacoits. But the learned Judge did not choose to proceed on this evidence of identification. He observed "from the facts given above there cannot be any doubt that these two witnesses Udoy Shankar and Charu Prabha Nath (P.Ws. 2 and 3 respectively) could recognise the accused Moinuddin Mozumdar and Sirajuddin. But the court generally in such case of recognition without corroborative evidence and identification by single witness would decline to accept such evidence as sufficient for the purpose of connecting an accused if not strongly supported by other attendant circumstances. It is rather difficult to understand this kind of approach to the evidence. If the court hag no doubt that Charu Prabha Nath was able to identify correctly the appellant as one of the dacoits, there was no necessity of any further ccrro-boration. To lend assurance to that identification the appellant was found in possession of one of the stolen properties soon after the dacoity and this should have been more than sufficient for the trial court to come to the conclusion that the appellant

was one of the dacoits. The State did not file an appeal against appellant's acquittal on the charge under Section 395-IPG and hence it is not necessary to labour the point.

3. Both the Trial Court and the High Court have come to conclusion that there was a dacoity as alleged by the prosecution in the house of Churamani Nath on the night of 1-3-1965 and that in the course of the dacoity a number of articles including ornaments, clothes and the studio camera in question had been stolen. At the time of the trial the appellant sought to prove that he had purchased the camera for Rs 45/-from a certain Mizo boy named Thang Sanga some years previously and in support of his plea he produced a receipt Ext. A supposed to be attested by defence witness No. 1 Jatindra Kumar. Both the courts, in our opinion, rightly rejected this plea because there could be no doubt that the alleged receipt Ext. A was fabricated for the purpose of the case. The receipt Ext. A had not been produced either before the police during the course of the investigation nor before the Commuting Magistrate. A mere look at the receipt goes to show that it must have been fabricated. There was considerable evidence before the court to show that the studio camera belonged to Udoy Shanker, P.W. 2 and that it had been correctly identified by him as his property. There is, therefore, no doubt that the appellant was liable to be convicted as a receiver of the property knowing or having reason to believe that it was stolen property.

4. For the purposes of conviction under Section 412 IPC the court must come to the conclusion that the dishonest receiver of the stolen property should be in possession of the same knowing or having reason to believe that its possession had been transferred by the commission of dacoity. Having regard to the fact that the studio camera was unlikely to change many hands before it was traced to the appellant on 5-3-1965 it might be permissible to presume that the appellant must have received the same knowing that it had been stolen in a dacoity. But the High Court has not given a clear finding on the fact though it reduced the sentence imposed by the Trial Court to one year's rigorous imprisonment. The High Court made the following observation :

> I, however, find that the sentence has been rather very harsh. The accused purchased the camera obviously knowing it to be a stolen property because he got it cheap. In these circumstances I think rigorous imprisonment for one year will meet the ends of justice. The sentence is altered accordingly. There will be no fine.
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> It would appear from the above that the High Court felt that the offence must be one under Section 411-IPC, in which case it would have been only fair if the conviction under Section 412 IPC was changed to one Under Section 411-IPC. In these circumstances, we think that we should regularize the conviction by convicting the accused under Section 411-IPC. The sentence of one year's rigorous imprisonment was justified and there is no good reason for interference. In the result the appeal is partly allowed, the conviction under Section 412 IPC is changed in one under Section 411-IPC. Subject to this variation, the appeal is dismissed.