Supreme Court of India
Shivappa & Ors vs State Of Mysore on 19 February, 1970
Equivalent citations: 1971 AIR 196, 1970 SCR (3) 720
Author: M Hidayatullah
Bench: Hidayatullah, M. (Cj)

PETITIONER:
SHIVAPPA & ORS.

Vs.

RESPONDENT:
STATE OF MYSORE

DATE OF JUDGMENT:
19/02/1970

BENCH:
HIDAYATULLAH, M. (CJ)
BENCH:
HIDAYATULLAH, M. (CJ)
RAY, A.N.
DUA, I.D.

CITATION:
1971 AIR 196 1970 SCR (3) 720
1970 SCC (1) 487

ACT:
Indian Evidence Act, 1872, s. 114--Recovery of property from possession of accused soon after commission of a dacoity--Presumption to be drawn--Whether a presumption of participation in dacoity or of lesser offence.

HEADNOTE:
Two carts loaded with cloth returning alongwith others from a weekly village market were looted by 20 or more persons. The houses of 20 persons including the 14 appellants were searched and the looted cloth was recovered from their Possession. They were tried and held guilty Linder s. 395 of the Indian Penal Code. The High Court dismissed their appeals. In appeal by special leave to this Court their only contention was that in the absence of other evidence connecting them with the dacoity, the presumption to be drawn from the possession of stolen clothes ought to have been one under s. 411 of he Indian Penal Code or at the most under s. 412 of the Indian Penal Code and not of complicity in the crime of dacoity. It was urged that since s. 114 of the Evidence Act did not lay down definitely the presumption to be drawn in a given set of circumstances it

was necessary always to start with the lesser presumption and draw the higher presumption only when there was some other evidence to. show the complicity of the persons in the crime itself.

HELD : If there is other evidence to connect an accused with the crime itself, however small, the finding of the stolen property with him is a piece of evidence which connects him further with the crime. There is then no question of presumption. The evidence strengthens the other evidence already against him. It is only when the accused cannot be conis stronger than if there is a large gap of time. Disposal of the fruits of crime that the presumption may be drawn. In what circumstances the one presumption or the other may be drawn will differ from case to case [722 D]

When the discovery of the fruits of crime is made immediately after the commission of the crime the presumption of complicity in the crime nected with the crime except by reason of possession of the fruits of crime requires the finding of a person ready to receive them and the 'shortness of time, the nature of the property which is disposed of, that is to say, its quality and character determine whether the person who had the goods in his possession received them from another or was himself the thief or dacoit, [722 F]

In the present case the offence was committed at night by as many as 'IO persons or more. Shortly after the offence the houses of 20 persons were searched and large quantities of the stolen goods were found in their houses. It was impossible that these 20 persons were merely 'receivers of stolen property from some other 20 persons who were the decoits. It was legitimate therefore to raise the presumption in this case that the persons with whom the goods were found were the dacoits themselves. [723 A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 87 of 1967.

Appeal by special leave from the judgment and order dated January 24, 1967 of the High Court of Mysore in Criminal Appeal .No. 29 of 1965.

A. S. R. Chari and R. V. Pillai, for the appellants. Shyamala Pappu and S. P. Nayar, for the respondent. The Judgment of the Court was delivered by Hidayatullah, C.J. , These are 14 appellants who appeal against their conviction under s. 395 of the Indian Penal Code and sentences of 5 years' rigorous imprisonment and fine of Rs. 1,000/- passed on them. Originally 20 persons were tried and convicted for the same offence and received a like sentence. 14 alone have appealed to this Court. The incident which took place on July 28, 1962 was theft by dacoity of certain cotton pieces from two carts within the limits of Lingsugar Police Station at about 11-30 p.m. The facts are that two

traders in cloth sent their wares in carts for sale. The cartmen halted after the market was over on the way for food. Thereafter six carts left for Mudgal at about 10 p.m. When the carts reached a Nala called Heri Halla about three miles from Lingsugur at about 11-30 p.m., 20 persons are said to have approached the carts and pelted stones. It was a dark night and the assailants were not identified. It appears that four out of the six carts escaped, but two carts were looted. The police investigated the case and arrested the 20 persons who were accused in the case as being the culprits involved in this incident. It is not necessary to go into rest of the case or the evidence on which the case of dacoity was established, because dacoity as such is not challenged before us. The accused were convicted on the sole evidence of having in their possession pieces of cloth which were later identified to belong to the -traders. Searches took place between July 30, 1962 and August 17, 1962. In these searches cloth which was undoubtedly stolen at the time of the dacoity was found in their houses. The High Court, and the Court below drew from this the conclusion that the appellants were themselves the dacoits, and convicted them accordingly under s. 395 of the Indian Penal Code and sentenced them to' 5 years' rigorous imprisonment and fine of Rs. 100/-.

In this appeal, the only contention raised by Mr. A. S. R. Chari is that the presumption that they were dacoits ought not to have been drawn since the circumstances do not admit the drawing of such a presumption in the case, According to Mr. Chari, the presumption to be drawn ought to have been one under S. 41 1 of Indian Penal Code or at the most tinder s. 412 of the Indian Penal Code but not of complicity in the crime of dacoity. He contends that the circumstances under which the one presumption or the other may be drawn under s. 114 of the Indian Evidence Act have not been stated by law and therefore it is necessary always to start with the lesser presumption and draw the higher presumption only when there is some other evidence to show the complicity of the persons in the crime itself. According to him there is no other evidence in the case which points, to the complicity of the 14 appellants in the crime of dacoity and therefore as they cannot be suspected to be dacoits themselves, the only presumption to be drawn is one of receivers of stolen property or as receivers of property which was stolen in a dacoity.

In our opinion, the law advocated by Mr. Chari is not correct. If there is other evidence, to connect an accused with the crime itself, however small, the finding of the stolen property with him is a piece of evidence which connects him further with the crime. There is then no question of presumption. The evidence strengthens the other evidence already against him. It is only when the accused cannot be connected with the crime except by reason of possession of the fruits of crime that the presumption may be drawn. In what circumstances the one presumption or the other may be drawn, it is not necessary to state categorically in this case. It all depends upon the circumstances under which the discovery of the fruits of crime are made with a particular accused. It has been stated on more than one occasion that if the gap of time is, too large, the presumption that the accused was concerned with the crime itself gets weakened. The presumption is stronger when the discovery of the fruits of crime is made immediately after the crime is. committed. The reason is obvious. Disposal of the fruits of crime requires the finding of a person ready to receive them and the shortness of time, the nature of the property which is disposed of, that is to say, its quantity and its character determine whether the person who had the goods in his possession received them from another or was himself the thief or the dacoit. In some cases there may be other elements which may point to the way as to how the presumption may be drawn. They need not be stated here for they

differ from case to case.(In the present case, the goods stolen were a large quantity of cloth taken for sale to the market. These goods were not sold and were being taken back to the dealers by the cartmen.) A large number of persons said to be 20 in number pelted stones at the cartmen and looted the, property. Immediately afterwards a number of searches were made and the goods were found with various persons who were prosecuted as offenders and they have been presumed to be involved in the dacoity itself. It may be noticed that from each person a large number of goods of the same type such as 20 choli pieces or ten pieces of cloth were found. (It is, impossible to think that within the short time available, these goods could have been easily disposed of to receivers of stolen property or could be placed in the custody of friends till such time as the original offenders could take them away.) The time gap in some cases is as short as two days and in some others it is not more than five days. In two cases only the time gap is about 19 days. Even then we think that the time gap is too short for original offenders to have disposed of the property to these appellants Or to have left the goods in their custody till such time as the original offenders could have taken them away.

We are, therefore, satisfied that the proper inference was drawn in this case. It must not be forgotton that the offence was committed at night by as many as 20 persons or more. The houses of 20 persons were searched and large quantities of the stolen goods were found in their houses. It is impossible to think that these 20 persons were merely receivers of stolen property from some other 20 persons who were the dacoits. It is legitimate therefore to raise the presumption in this case that the persons with whom the goods were found were the dacoits themselves. This presumption has been drawn and in our opinion rightly in this case The conviction was therefore correct in 'all the circumstances of the case.

As regards the sentence, the offence no doubt was serious. But no injury beyond one appears to have been caused. Therefore we think that a sentence of three years' rigorous imprisonment will meet the ends of justice in this case. The sentence is reduced to three years' rigorous imprisonment. The sentence of fine will stand. The appeal is allowed to this extent.

G.C. Appeal partly allowed.