Jhagru Kurmi vs State on 2 March, 1950

Equivalent citations: AIR1950ALL497, AIR 1950 ALLAHABAD 497

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. A woollen coat, a muffler and a sweater of Ram Chandra Singh, a student of the Banaras Hindu University, were stolen on the night of 2nd January 1949. On 6th February 1949 they were found in possession of Jhagru applicant. He was wearing the sweater and muffler and he produced the coat on being asked about it. He stated at the time of recovery that he had purchased these things from Dwarka for Rs. 10.

2. Dwarka was convicted under Section 379, Penal Code, Jhagru was convicted under Section 411, Penal Code. Dwarka filed a revision before the Sessions Judge for his conviction and sentence of fine of Rs. 40. The revision was rejected by the learned Sessions Judge and so Jhagru comes up in revision to this Court.

3. I am of opinion that it cannot be said that Jhagru had received these stolen clothes knowing or having reason to believe them to be stolen property. His conduct indicates that he had no guilty conscience. His place of residence is close to the University. He had been wearing these clothes and it was on account of a friend of Ram Chandra having seen him put on the coat that Ram Chandra and others went to the applicant's house and questioned him about the coat which he did not happen to be wearing at the time On inquiry he at once produced the coat and informed them that he had purchased these things for Rs. 10 from Dwarka. Dwarka admitted in Court that he had sold these articles. Jhagru, applicant, stated in Court that Dwarka had told him that he had got these clothes from students as a reward. It appears that Jhagru felt satisfied at this statement and purchased the articles.

4. The presumption arising against the applicant under Section 114, illus. (a), Evidence Act, is sufficiently rebutted by the accused's giving an explanation how he got possession of these articles, an explanation "which has been found to be correct. It is therefore, to be inferred from the circumstances of the case whether it can be concluded that the accused received-these clothes knowing or having reason to believe that they were stolen property. There is no evidence nor is there any circumstance to show that he must have known so The reasons why the trial Court concluded against the accused are expressed thus:

> "The accused Dwarka is a short statured boy. Exhibits 1, 2 and 3 will fit a man of tall stature. Exhibit 1 is a woollen coat not an old one. It the accused would have acted as a normal reasonable man, he would have known that the articles were stolen ones."

The fact that the coat and sweater would not have fitted Dwarka is not helpful in this connection, as Dwarka did not tell Jhagru, applicant, that they were his clothes, in which case the question of fitness could have arisen, but told him that he had got them as reward from students. The clothes given by a master to a servant need not fit the latter. It is not very clear what is meant by the expression "the woollen coat was not an old one " It may be that the coat was not a very old one. Anyway, the fact that the coat was not a very old one could have put the applicant on his guard, but is not such a fact that it must lead the applicant to believe that the coat must have been obtained by Dwarka by means of theft or by any such means that the coat would become stolen property. It was not necessary for the applicant to make inquiries. Section 411, Penal Code, does not require that the person receiving the article Which is found later on to be a stolen article must make inquiries at the time of receiving it whether it was obtained by theft or honestly. It is true that ordinarily students do not present coats in good condition to their servants, but it cannot be said that a student will never present; a wollen coat, not very old, to a servant, The remote possibility of such a present again does not, to my mind, provide a sufficient reason to believe that the coat must have been stolen property.

5. The case reported in Muhammad Ibrahim v. Emperor, 17 Cr. L. J. 25 : (A. I. R. (3) 1916 ALL. 86) is fairly parallel. Muhammad Ibrahim, the applicant in that case, purchased copper wire from Ram Narain as second-hand material. The copper wire proved to be stolen property. On being asked as to whence he had got the wire Ram Narain told Muhammad Ibrahim that it had remained for some time at his shop, It was observed at p. 27:

> "That might or might not be in itself an answer which ought to have put Muhammad Ibrahim upon his guard. But I am not prepared to hold that looking; to the profession of the two men, the time of the sale,, and the 'place of the sale, it was the duty of Muhammad Ibrahim to have said to Ram Narain, 'I do not believe you and insist upon knowing whence you have got it in the first instance." A prudent man might have put such a question, but simply upon the fact that Muhammad Ibrahim did not farther press the question I am not prepared to hold that he had conceived guilty knowledge regarding this article."

6. It also appeared in that case that Muhammad Ibrahim purchased the wire for Rs. 48 and sold it a few days later for Rs. 112-8-0. This fact also was not considered sufficient, in the circumstances of that case, to establish that Muhammad Ibrahim must have known the wire to be stolen property. In the present case we have no idea about the material and the price of the coat. It may be that Jhagru, applicant, got the things as a bargain. There is, however, nothing on the record to indicate that the bargain was of such a type as must have led Jhagru to believe that the articles were stolen property.

7. It was observed in Empress v. Rango Timaji, 6 Bom 403 :

> "It was not sufficient to show that the accused was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired. The word 'believe' in Section 414, Penal Code, is a very much stronger word than 'suspect', and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property."

This view has been accepted in the above Allahabad case and in Suraj Prasad v. Emperor, A.I.R. (16) 1929 Oudh 213 : (30 Cr. L. J. 969) and in Bhaggan v. Emperor, 11 Luck. 70 : (A. I. R. (22) 1935 Oudh 327 : 36 Cr. L. J. 602). I am of opinion that the circumstances of the present case are not such circumstances which must have convinced the applicant as a reasonable person that the articles were stolen property.

8. I am, therefore, of opinion that it is not established that the applicant received these clothes knowing or having reason to believe that they were stolen property. I, therefore, allow this revision, set aside the order of the Court below and acquit the applicant of the offence under Section 411, Penal Code. The fine, if paid, will be refunded.