

# SUPREME COURT OF INDIA

Trimbak

Vs.

State of M.P.

Crl.A.No.109 of 1952

(Mehr Chand Mahajan and N. H. Bhagwati, JJ.)

12.03.1953

## JUDGEMENT

### MAHAJAN, J.:

1. This is an appeal by special leave from the judgment of the High Court of Judicature at Nagpur dated 5th December 1951, setting aside an order of acquittal, and convicting the appellant under S. 411, I. P. C., and sentencing him to nine months's rigorous imprisonment.

2. The case for the prosecution was that the appellant along with some other persons committed dacoity in the house of one Namdeo Motiram on the night of 11-12-1950 and thereby committed an offence punishable under S. 395, I. P. C. The defence was that the appellant had been falsely implicated. It was denied that any of the alleged stolen properties had been recovered by the police at his instance, or from his possession. The magistrate acquitted the appellant and the coaccused. It was held that the recovery of the stolen property from a field which was accessible to all and which did not even belong to the appellant but to one Namdeo Ananda was not sufficient to bring the guilt home to the appellant or to prove that he was in possession of the stolen goods. The evidence as regards his participation in the dacoity was disbelieved and it was observed that the manner in which the search was conducted did not inspire confidence.

3. The State Government preferred an appeal to the High Court against the order of acquittal under S. 417 Criminal P. C. The High Court agreed with the finding of the trial magistrate that the appellant was not guilty of the offence under S. 395; it, however convicted him under S. 411, I. P. C. for receiving stolen property. Leave to appeal against this decision was allowed by this court as on a perusal of the judgment of the High Court it appeared that there had been a grave miscarriage of justice in the case.

4. It is settled law that the presumption of the innocence of an accused person is reinforced by an order of acquittal and a heavy onus rests on the prosecution in an appeal from such an order to prove that the order is manifestly erroneous. The High Court seems to have approached the case as if it was considering an appeal preferred against his conviction by an accused person. The magistrate came to the conclusion that the witnesses for the discovery were interested in the prosecution and were not on good terms with the appellant, that the kangi from where the property is said to have been taken was in the open and easily accessible to all and sundry and that in these circumstances it was not safe to hold that the place was in the possession of the accused, or that the property was recovered from his possession. The learned Judges in the High Court, however, took

the view that the ornaments belonging to the complainant were taken out by the respondent from the field of Namdeo Anand and that the respondent having given no explanation regarding his knowledge of the place from which the ornaments were taken out, it must be presumed that he must have kept the ornaments there. It was further held that the fact that the field did not belong to the respondent and that the place was accessible to others would not show that the ornaments were not in his possession but were kept by someone else, in the absence of a statement from the respondent explaining the circumstances under which he came to know about the ornaments.

5. We are satisfied that this was not the correct way of approaching the decision of a case under S. 411, I. P. C. It is the duty of the prosecution in order to bring home the guilt of a person under S. 411, I. P. C. to prove, (1) that the stolen property was in the possession of the accused, (2) that some person other than the accused had possession of the property before the accused got possession of it, and (3) that the accused had knowledge that the property was stolen property. There is no reliable evidence to prove either of these facts.

6. When the field from which the ornaments were recovered was an open one, and accessible to all and sundry, it is difficult to hold positively that the accused was in possession of these articles. The fact of recovery by the accused is compatible with the circumstance of somebody else having placed the articles there and of the accused somehow acquiring knowledge about their whereabouts and that being so, the fact of discovery cannot be regarded as conclusive proof that the accused was in possession of these articles.

7. The High Court found that as the respondent was not identified by the complainant or his wife, it was not safe to draw the inference that he was actually present at the time of the dacoity. That being so, it could not be held that he was the thief. There is no evidence whatever that the ornaments were in the possession of some one else before the accused got them.

8. The next conclusion of the High Court was clearly not sustainable. It held that as the respondent and the complainant are residents of the same village, the respondent must have known that the ornaments were taken away from the house of the complainant by the culprits by using force and that he came into possession of the ornaments with the knowledge that they were stolen property within the meaning of S. 410, I. P. C. The learned counsel appearing for the State Government was not prepared to support this inference drawn by the High Court. From the bare fact that the accused was residing in the complainant's village his knowledge that the ornaments were stolen property could not legitimately be concluded. We thus hold that the prosecution failed to prove that the ornaments said to belong to the complainant were either in the possession of the accused or that he had the knowledge that they were stolen articles. Having acquitted the accused of the charge under S. 395, I. P. C. there were no valid reasons for convicting him under S. 411, I. P. C.

9. For the reasons given above, in our judgment the acquittal order was erroneously set aside. We therefore allow this appeal, set aside the judgment of the High Court and restore the decision of the magistrate acquitting the appellant.

Appeal allowed.

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