

Raj Bhongshi Prasad

Vs

State of Assam

Criminal Appeal No. 101 of 1967

(S. M. Sikri, G. K. Mitter, K. S. Hegde JJ)

31.07.1969

JUDGMENT

SIKRI, J. -

1. Four persons were committed to the Court of Sessions and charged under Section 457, 380 and 411, I.P.C. They were committed by the Magistrate as he found that amount involved was large and he was not competent to award the required punishment. The prosecution case was that a burglary took place in the R.M.S. (Railway Mail Service) Officer at Tezpur, on the night of the 20th November, 1962, when the town was being evacuated due to the fall of Bomdila. There is no dispute that the burglary took place and a large amount of money was stolen. The learned Sessions Judge acquitted Raj Bhongshi Prasad as no case was made out against him. Evidence led against him consisted in the main, of the following evidence. P.W. 14, Bhupendra Chandra Sen, Sub-Inspector, searched the house of accused Raj Bhongshi and he described the search as follows :

"I searched the house of accused, Raj Bhongshi Prasad, being led by accused Ramasis. Ramasis brought out a suit case, from under the bed-stead of accused Raj Bhongshi Inside the suit case I found 16 ten rupee G.C. notes, 77 hundred rupee notes of difference series and some other things inside suit-case"

On cross-examination he stated that "I found the money in the western Bhit house under a bed-stead. I cannot say whose bed it was I took it to be the house of Raj Bhongshi as Ramasis showed it to me It was a small house with two rooms. There were two bed-steads in the room where the money was found I do not know in which bed-stead accused Raj Bhongshi used to sleep". It was suggested to him and he denied the suggestion, that it was Ramasis who brought out the money from under the bed-stead of accused Raj Bhongshi. But the next witness Sadhu Shah deposed that "then Ramasis went inside the house alone and brought out the box." P.W. 16, Sishuranjan Banerjee could not say who brought out the suit case containing the money form inside the house. The learned Sessions Judge criticised the search because no two respectable persons of the locality were asked to bear witness to the search. He held that as the house was not actually in occupation of accused Raj Bhongshi and there was no reliable evidence to show from whom the money was recovered and there was the possibility of introducing the suit case into the house by the Jhap door on the back side by some body else, no case was proved against the accused Raj Bhongshi. The other accused Ramasis was held guilty under Section 457, I.P.C. and he acquitted the others of charges led against them.

2. The State filed an appeal. The High Court convicted accused Raj Bhongshi under Section 411, I.P.C. and sentenced him to rigorous imprisonment for two years. This Court granted special leave

and now the appeal is before us.

3. The High Court after noticing the evidence observed that "it is clear from the evidence that the house was small and consisted of two rooms. There were two other person in the house, viz. one washerman and another man named Sheodani. The room from which the suit-case containing the money was recovered had two bed-steads. Obviously it was occupied by Raj Bhongshi and Ramasis. They were both employees in the R.M.S. Office at Tezpur. They came together from Tezpur and Ramasis stayed with Raj Bhongshi. Therefore, it can be held beyond any reasonable doubt that accused Raj Bhongshi knew about the money in the suit case and also that it was looted from the R.M.S. Office. He was present when the money was recovered. In his examination under Section 342, Cr. P.C., he said that he could not see what was found in the suit case. It was not his case that he did not know about the existence of currency notes in the suit case. All this goes to show his knowledge about the money in the suit case and such a huge amount kept in the suit case by a petty employee like Ramasis must have been known to accused Raj Bhongshi to be stolen property. He kept the suit case in his house to help Ramasis obviously for valuable consideration. In the result he is guilty under Section 411, I.P.C." Section 411, I.P.C., read as follows :

"Whoever dishonestly receives or retains and stolen property, knowing of having reason to believe the same to be stolen property, shall be punished with imprisonment of wither description for a term which may extend to three years, or with fine, or with both."

4. The learned counsel contends that there is no evidence to prove that the accused knew about the money which was stolen and that he received or retained any such property. We are unable to find any evidence on record to show that the accused received or retained the stolen property. Even if it be assumed to be relevant, there is no evidence that the bed-stead under which the suit case was found was his bed-stead. There is also no evidence that the suit case belonged to him. We have already set out the relevant portion of the evidence and it appears from that that it was really Ramasis who went inside the house and brought out the suit case. Further, there is no evidence to show that he knew that the property was stolen and was kept in the suit case. The conclusion of the High Court, with respect, is based on conjectures. Further the High Court was dealing with an appeal from acquittal and it should have displaced the reasons given by the learned Sessions Judge for his conclusion.

5. The appeal is allowed and we direct that the accused Raj Bhongshi Prasad be released forthwith. If he has already been released on bail as directed by this Court, the bail bond be deemed as cancelled.

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