Virumal Mulchand and Another

Vs

State of Gujarat

Criminal Appeal No. 66 Of 1970

(H. R.Khanna, A. Alagiriswami, R. S. Sarkaria JJ)

21.09.1973

JUDGMENT

KHANNA, J. -

1. Five accused Ramanbhai Maneklal, Dhanji Vanmalidas, Jawansing Ukarsing, Virumal Mulchand and Ghelaram Murajmal were tried in the Court of the City Magistrate Ahmedabad, the first two for offences under Section 457 read with Section 380 Indian Penal Code and the last three for offences under Section 411 Indian Penal Code. The learned Magistrate acquitted accused Nos. 1 to 3, while Virumal accused No. 4 and Ghelaram accused No. 5 were convicted under Section 411 Indian Penal Code and were sentenced to undergo rigorous imprisonment for a period of nine months and to pay a fine of Rs. 200 or in default to undergo rigorous imprisonment for a further period of one month. Virumal and Ghelaram went up in appeal, but their appeal was dismissed summarily by the Gujarat High Court. These two accused have now come up in appeal to this Court by special leave.

2. The prosecution case is that on the evening of January 9, 1969 between 8 and 10 p.m., a theft took place at the premises of Manubhai Ambalal PW in Ahmedabad. A lady wrist watch, four gold bangles., one gold necklace, one silver ornament and a vessel were stolen as a result of the theft. Report about the theft was lodged by Manubhai at the police station.

3. On the evening of January 10, 1969, it is stated, Police Sub-Inspector Piareylal Yadav sent for panch witness Dwarkadas Raman Lal and in his presence interrogated Ramanbhai accused No. 1. Ramanbhai then led the police party to Jawansing accused No. 3. Jawansing led the police party to Virumal appellant. Stolen lady watch was recovered by the police party form the possession of Virumal. Virumal then led the police party to the house of Ghelaram appellant. Four gold bangles, one gold necklace and one silver ornament which had been stolen from the house of Manubhai were recovered from the house of Ghelaram. The recovery of watch from Verumal took place at 1 a.m. on the night between January 10 and 11, 1969, while the recovery of ornaments from Ghelaram took place at 2.30 a.m. on that night. The accused were thereafter sent up for trial.

4. At the trial two appellants, with whom we are now concerned, made a flat denial of the prosecution allegations. A written statement was also filed on behalf of the appellants and in that also, apart form some reference to discrepancies in the prosecution evidence, the only plea which was taken was that of denial simpliciter.

5. The trial magistrate on consideration of the evidence came to the conclusion that no case had been made against accused Nos. 1 to 3, while the appellants were convicted and sentenced as above. Appeal filed by the appellants as mentioned earliar was dismissed summarily by the High Court.

6. In appeal before us, Mr. Dholakia on behalf of the appellants has contented that there was no sufficient compliance with the provisions of Section 342 of the code of Criminal Procedure as the various incriminating circumstances were not put to the appellants. The High Court in view of that, according to the learned Counsel, was not justified in dismissing the appeal filed by the appellants summarily. In this respect we find that the High court entitled to dismiss the appeal summarily under Section 421 of the Code of Criminal procedure if on perusal of the judgment of the trial Court and the grounds of appeal, it found that no arguable point had been raised on behalf of the appellant. So far as the contention now raised on behalf of the appellants is concerned that there had not been sufficient compliance with the provisions of Section 342 of the Code of Criminal Procedure, we find that no such ground was taken by the appellants in the memorandum of appeal before the High Court. As such, it cannot be said that an arguable point was raised before the High Court on the score of noncompliance with the provisions of Section 342.

7. It has next been argued by Mr. Dholakia that prosecution has failed to prove that the appellants were dishonest possession of the stolen goods knowing or having reason to believe the same to be stolen. In this respect, we find that it is not the case of the appellants that the goods in the question which were recovered belonged to them. On the contrary, the evidence of Manubhai PW was to the effect that the goods recovered from the appellants were the same as belonged to the witness and had been stolen as a result of the theft from his premises on the evening of January 9, 1969. The appellants were found in possession of the goods within two days of the theft. In the circumstances, illustration 'a' to section 114 of the Indian Evidence Act applies directly to the facts of the present case. According to that illustration, if a man is found in possession of stolen goods soon after the theft, the court may presume that he is either the thief or has received the goods knowing them to be stolen unless he can account for his possession. As already mentioned, the appellant have not been able to furnish any explanation for the possession of stolen goods. The appellants in the circumstances should be held to have been rightly convicted by the trial court.

8. There is, in our opinion, no force in the appeal which fails and is dismissed.

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