

RAJASTHAN HIGH COURT

State

Vs.

Rama

Criminal Appeal No. 200 of 1954

(Wanchoo, C.J. and Modi, J.)

02.04.1956

JUDGMENT

Wanchoo, C. J.

1. This is an appeal by the State against the acquittal of Rama by the Sub-divisional Magistrate Ballabhnagar.

2. The case for the prosecution was briefly this.

3. Ghisulal, Sales Ameen, accompanied by a number of persons, went to village Ratnapurki-Sarai, in order to effect attachment of the property of Kalu and Bhura against whom a decree for Rs. 131/11/- was in execution. On arrival at the village, a buffalo with its calf was pointed out to the Sales Amin, and it was attached. Thereafter, the attached cattle were entrusted to Daulatram. The Amin along with those who were with him, as well as Daulatram then left the place with the cattle. They had gone a short distance when Rama accused, who is the younger brother of the judgment-debtors arrived armed with a lathi. He hit the buffalo with the lathi and snatched the rope, with which Daulatram was leading the buffalo, from his hands. He also snatched the rope of the calf which was in the hand of another person. With the result that the two animals ran away. He then left the place. The matter was first reported to the Court, and from there the report was sent to the Thana for investigation. The incident took place on 26-4-1953, and the report reached the Thana on the 2nd of May. Thereafter, the accused was prosecuted after investigation.

4. He pleaded 'not guilty', and said that the whole case was false, and that no such incident took place, and that he had been implicated on account of enmity.

5. The learned Magistrate appears to have come to the conclusion that the incident took place as alleged by the prosecution, but as it had been proved that the animals belonged to Rama, he was of opinion that no offence of theft took place, and therefore no offence of robbery under Section 392 could take place.

6. So far as the facts are concerned, there is, in our opinion, no doubt that the animals were attached, and were being taken away by the Superddar in company of the Amin, and others when Rama arrived on the scene and drove away the animals by hitting at them with a lathi, and thus removed them from the possession of the Superddar. This story has been proved by the evidence of Daulatram, Dhanraj, Ghisulal Sales-Amin, Devisingh, and Mangilal Vakil of the decree-holder who were present at the time of the attachment as well as the taking away of the animals. There is no reason, in our opinion, for disbelieving the evidence of these witnesses. We cannot accept that these witnesses have any enmity with the accused; nor has anything been brought out in their cross-examination to suggest this. Further the evidence of Mangilal Vakil, and Dhanraj is that Rama had arrived just after the attachment had taken place, and when the attachment list was being prepared. It cannot, therefore, be said that Rama did not know that these animals had been attached. It may be mentioned that Rama's case is not that he did not know at the attachment of the animals. His case is that no such incident took place at all which we are not prepared to believe.

7. He produced witnesses to prove that the animals belonged to him, and for purposes of this case we may accept that. He also produced one witness Gangaram D.W. to state that the buffalo ran away of itself; but we are not prepared to believe his evidence in the face of overwhelming evidence for the prosecution.

8. The next question which arises is whether the Magistrate was right in acquitting the accused on these facts. The reason why the Magistrate has acquitted him is that the animals belonged to Rama, and therefore he removed them from the possession of Daulatram Superddar, it cannot be said that he did so dishonestly. The learned Magistrate has relied in this connection on certain cases with which we shall deal presently.

9. Section 378 I.P.C. defines theft in these terms:

Whoever intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property, in order to such taking,

is said to commit that. There is no doubt in this case that Rama intended to take away the animals, which are movable property, out of the possession of Daulatram without his consent, and that in order to take them, away he hit them, and made them run away. The only question is whether this action of Rama Was done dishonestly.

10. Now 'dishonestly' is defined in Section 24 I.P.C. as follows:

"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'."

'Wrongful loss' is denned in Section 23 as follows :

" 'Wrongful loss' is the loss by unlawful means of property to which the person losing it is legally entitled."

What we have, therefore, to see is whether Rama caused wrongful loss to Daulatram Superddar who was in possession of the animals as they had been entrusted to him by the Amin. There is no doubt that loss of property was caused to Daulatram inasmuch as he was made to lose the animals. There is also no doubt that Daulatram was legally entitled to keep the animals in his possession as they were entrusted to him. The only question is whether this loss was caused to Daulatram by unlawful means. It is to our mind obvious that the loss in this case was caused by unlawful means because it can never be lawful for a person, even if he is the owner of an animal, to take it away after attachment from the person to whom it is entrusted without recourse to the Court under whose order the attachment has been made. We are, therefore, clearly of the opinion that the action of Rama in taking away the animals from the possession of Daulatram Superddar Was dishonest, inasmuch as he caused wrongful loss to Daulatram by making him lose by unlawful means these animals to the possession of which Daulatram was legally entitled. Rama would thus be clearly guilty on these facts of an offence of theft under Section 379, I.P.C.

11. Let us now look at the cases relied upon by the learned Magistrate.

12. In *Ramaswamy Naicken v. Dandakaran*, ¹ it was held that where property which did not belong to the judgment-debtor was attached and handed over to other persons on giving security, the real owner of such property who rescues it from such persons was not guilty of theft. The learned Judge in this case relied on an English case which we have not been able to lay our hands on. He did not consider the definition of theft in Section 373 I.P.C., and the definitions of dishonestly in Section 24, and of 'wrongful

loss' in Section 23 I.P.C. In these circumstances, we must say with all respect that this case is not very helpful.

13. The next case is *Jahana v. Emperor*,² where it has been held that if property belonging to another person is wrongfully taken away by the bailiff, and the latter and his associates take back that property, this is not an offence under Section 379. The learned Judge further observed that it was an absurd doctrine to apply to the people of a Punjab village that if their property was wrongly taken by some one acting under color of Government office it was their duty to go to the police or to the Court and that it was a crime to take back the property.

With all respect, we cannot agree with this later proposition laid down by the learned Judge. If that were correct law, it would mean that attaching officers would never be safe, and any person claiming the property could take it away from them after the attachment. The learned Judge did consider the definition of the word 'dishonestly', but did not consider the definition of the term 'wrongful loss' in Section 23 I.P.C. In these circumstances, this case also is not very helpful.

14. The other High Courts have held that if property is taken away in the manner in which it was taken away in the present case, the act amounts to theft. We may in this connection refer to *Chunnu v. King-Emperor*,³ in which it has been held that if the property, which has been entrusted to a Superddar is taken away even by the person who is the owner of it, it amounts to theft. The same view was taken in *Kamla Pat v. Emperor*,⁴ But in both these cases it was assumed that in these circumstances there would be dishonesty. The cases, therefore, are only helpful to this extent that the Allahabad High Court considers that a theft would be committed' in such circumstances.

15. In *Rahimdino v. Emperor*,⁵ it was held that the removal of attached crops amounted to dishonest removal when it was known that the crops had been attached, and an offence of theft would be committed. In this case also, it was practically assumed that the act was dishonest.

16. In *Lal Bahari v. Emperor*,⁶ the Oudh Chief Court held that removal of an attached animal from the custody of the Court so long as it was under attachment was dishonest. Dishonesty was assumed in this case also.

17. We are of opinion, for reasons which we, have already given, that such removal

amounts to removing attached property dishonestly provided the person removing it knows that it has been attached by the order of a Court. In this case, Rama undoubtedly knew that the property had been attached, and the removal was therefore dishonest, and he would be guilty of theft under Section 379 I.P.C.

We do not consider that, in the circumstances of this case, an offence under Section 392 I.P.C. has been made out. Further as Rama was charged under Section 392, and as Section 379 is a minor offence, we can convict him under Section 379 I.P.C.

18. We, therefore, allow the appeal, set aside the acquittal of Rama, and convict him under Section 379 I.P.C. In the circumstances of the case, we are of opinion that ends of justice would be met if Rama is fined Rs. 100/-. We, therefore, fine him Rs. 100/-. In lieu of payment of fine, he would undergo three months' rigorous imprisonment. He is given one month's time within which to pay up the fine.

Appeal allowed.

Cases Referred.

1. AIR 1933 Mad 840
2. AIR 1941 Lah217
3. 8 All LJ 656
4. AIR 1926 All 382
5. AIR 1928 Sind 68
6. AIR 1925 Oudh 464