

(1933) 08 AHC CK 0061
In the Allahabad High Court
Case No : Civil Revision No. 134 of 1933

Babu Prahlad Das

APPELLANT

Vs

Mahadeo alias Deoo

RESPONDENT

Date of Decision : 22-08-1933

Acts Referred:

Contract Act, 1872 — Section 151

Citation : (1933) 08 AHC CK 0061

Hon'ble Judges : Kendall, J

Bench : Single Bench

Advocate : B. Malik, for the Appellant; Gadhadhar Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Kendall, J.—This application arises from a suit brought to recover the gold chain or the value of the gold chain which the Plaintiff had pawned with the Defendant. It was proved in the case that the gold chain and a great many other jewels had been stolen from the shop of the Defendant in the course of a burglary, and the chief question for the Court to decide was whether the Defendant as a bailee had taken as much care of the goods bailed to him as a man of ordinary prudence would under similar circumstances, take of his own goods of the same bulk quality and value as the goods bailed, in accordance with the provisions of Section 151, of the Indian Contract Act.

2. The learned Judge was well aware of the provisions of the law, but he has used some expressions which make it doubtful whether he had the strict provisions of the law in his mind where he came to his final decision. In dealing with the evidence of the Defendant he points out that the gold chain with other ornaments was kept in a shop which was very strongly built of stone slabs and that the inner room was fortified all round and that there was, according to the evidence of the Police Officer who had been at chawk at the time, "no possibility of any theft". The Judge's conclusion after recording this evidence appears to have been

Every possible precaution was taken to safe-guard the room and to build it pucca just as it could be expected from a man of ordinary prudence under similar circumstances.

3. After discussing the statement of the Plaintiff, however, he finds that the Defendant

did not take all necessary and reasonable precautions as it could have been expected from a man of ordinary prudence and intelligence,

4. and he therefore came to the conclusion that the Defendant was liable.

5. It was not necessary for the Defendant to show that he had taken every precaution or so many precautions that a theft would become impossible, nor had he to show that he had taken "all necessary and reasonable precautions". It is, as Mr. Malik has pointed out, easy to be wise after the event, and precaution that may seem to have been advisable after a burglary has been committed are not always those that a man of ordinary prudence takes to protect his own goods. The facts in favor of the Defendant are that he was keeping his chain with a large number of other jewels, many of which belonged to him and for all of which he was responsible; that they were stored in a specially constructed room made of stone slabs on all sides and roofed in the same way, because it is in evidence that the Defendant had suffered from a theft some years before and had this shop built specially so as to be reasonably burglar-proof; and that he kept a chaukidar to watch the place at night, though no one actually slept inside the shop. It appears that the burglary was effected by breaking through the stone slabs of the roof with a pickaxe, the thieves having gained access to the house by entering a room above the shop. This room had been leased by the Defendant to a person who according to the evidence of the Police Officer, allowed it to be occupied by a prostitute; and the Court was clearly influenced by the fact that the Defendant had not made sufficient enquiries into the antecedents and character of his tenant.

6. Such being the facts the Court had to decide the matter in accordance with Section 151, and it must be admitted that the decision is not altogether an easy one. There is some force in the argument that the room above the shop where all these valuables were kept ought not to have been left in the possession of a stranger. Against this has to be set the fact that the shop itself was so solidly built that it could not be broken into without the use of a pick-axe, that a chaukidar had been provided and that he would be expected to hear the noise of anyone trying to break into the shop if indeed he was awake. The Court seems to have assumed that the chaukidar must have been asleep, but there is no legal presumption that a chaukidar must necessarily be asleep and it is quite possible that the thieves by means of special instruments or of very great skill were able to effect their entrance without making any noise.

7. After considering all the proved facts to the best of my ability I have come to the conclusion that the negligence on the part of the Defendant has not been

proved, and that the trial Court has erred in setting up too high a standard of precaution. A bailee, according to the "Laws of England" by the Earl of Halsbury, Vol. XXI page 431, is bound to exercise such care as a careful and vigilant man would exercise for the custody of his own chattels of a similar description and character. This pronouncement varies very little from the terms of Section 151 of the Contract Act, and we have it in evidence that the Defendant had taken special precautions for the safe custody of the: goods stored in the shop, that jewellery which was his own property was stored precisely in the same way and in the same place, and that a chaukidar had been provided. According to the reasoning of the trial Court there was still another precaution that should have been taken, viz., he should have satisfied himself as to the antecedents and character of the tenant whom the upper flat was let out. If however the Defendant was reasonably satisfied that that tenant, whatever his character was would not be able to effect an entrance into the shop without being detected, I think that he must be freed from liability, and in my opinion the circumstances of this case show that a man of ordinary prudence would have been so satisfied. As events happened we know that, if the upper flat had not been leased out to any one or had been occupied by the Defendant himself, or if a second chaukicar had been made to sleep there, the theft would probably not have taken place; but to hold that the Defendant rendered himself liable because he did not take these extraordinary precautions is in my opinion, to read into the provisions of Section 151, a phrase which does not exist there but which the Judge has himself used viz, "every possible precaution". in these circumstances I allow the application, set aside the decree and order of the Court below, and direct that the Plaintiff's suit be dismissed with costs in both Courts.