

(1952) 05 GAU CK 0005

In the Gauhati High Court

Case No : Criminal Revision No. 124 of 1951

Golamjat Singh and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 23-05-1952

Acts Referred:

Penal Code, 1860 (IPC) — Section 403, 411

Citation : AIR 1953 Guw 154

Hon'ble Judges : Ram Labhaya, J

Bench : Single Bench

Advocate : J.C. Sen, for the Appellant; R.K. Goswami, Government Advocate (Junior), for the Respondent

Final Decision : Allowed

Judgement

Ram Labhaya, J.—The three petitioners were convicted u/s 411, Penal Code. They were found taking away by river two logs of wood which were seized. One of these logs had a mark A. D. A. on it. They were convicted u/s 411, Penal Code for being found in possession of the log with the mark on it. Their appeal was dismissed. They have challenged the legality of their conviction by this petition.

2. The facts found are that the logs were being taken up the stream at about mid-night on a rafter by the petitioners. Lalchand Namasudra, S. I., P. W. 3 saw them. He suspected that the logs were stolen property. He seized the logs and prepared a seizure list which was witnessed by three persons. One of these witnesses was examined at the trial. He is Monbahadur Chetti, P. W. 2. The seizure list contains the statement that one of the logs bore the mark A. D. A.

3. The defence set up was that the logs were 2 parts of the trunk of the same tree which petitioner Golamjat Singh had purchased from Mahashid Ali, D. W. 1. P. W. 3 also deposed that one of the accused had stated that he had purchased the logs. When and where the logs were picked up from the stream is not known. The prosecution have not been able to give any evidence on this point. One

thing, however, is obvious. The logs were being taken to some destination and since Golamjat Singh's case at the trial was that he had purchased these logs, it may be reasonably inferred that they were being taken to his place.

4. It has been amply proved that the mark A. D. A. was of Ahmed Ali, a Mahaldar. The log which has been treated as stolen property bore this mark. The learned Government Advocate has conceded that conviction u/s 411, Penal Code is not sustainable. The reason is obvious. When there is no evidence that the log had been stolen before it was picked up from the stream by the petitioners, they could not be held to have received or retained stolen property with the requisite knowledge or the intention. The log had not been stolen; nor was any other offence committed with respect to it which would have made it stolen property before it was picked up. Their conviction u/s 411, Penal Code, therefore is not sustainable I as held in-- Phul Chand Dube Vs. Emperor,

The learned Government Advocate, however, contended that the conviction should be altered to one for criminal misappropriation of the log in question as the act complained of comprises all the elements of this offence. The fact that at the trial Golamjat Singh claimed that he had purchased the logs in question from his defence witness could not serve as evidence of criminal misappropriation on the part of Golamjat Singh. Misappropriation had to precede the seizure of the logs in question. The prosecution has to prove it by independent evidence. False defence would not obviate the necessity of this proof. In-- Phul Chand Dube Vs. Emperor, relied on by the learned Government Advocate, the accused had set up the same defence It was found to be false as in this case. In spite of that it was not considered as evidence proving or tending to show that criminal misappropriation had taken place. The prosecution in that case, however, had independent evidence to support a conviction u/s 403, Penal Code for criminal misappropriation. The accused there had kept a bullock that had strayed with him for several months. He then sold it. The purchaser promised in writing to pay the price, but subsequently resiled from the bargain, suspecting that the bullock might have been stolen. The defence set up, therefore, has to be excluded from consideration when determining the question whether criminal misappropriation by all or anyone of the petitioners has been proved.

Section 403, Penal Code requires dishonest misappropriation or conversion of the property. According to explanation 2 to Section 403 if the moveable property is appropriated by the accused to his own use when he knows or has the means to discover the owner, or before he has used reasonable means to discover the owner and give notice to the owner and has" kept the property a reasonable time to enable the owner, to claim it, there would be dishonest misappropriation. What are reasonable means and what is a reasonable time in such a case are questions of fact. It is not necessary that the person taking possession of the property should know who is the owner of the property or that any particular person is the owner of it. It is sufficient if at the time of appropriating it he does not believe it to be his own property or in good faith believe that the legal owner

cannot be found.

5. In this case the log was still in the river. It had not yet reached the destination to which the accused wanted to take it. It was mid-night. It has not been proved that the petitioners knew or had the means of discovering the owner. They did not have reasonable time for discovering and giving notice to the owner that the property was available for him. It is true that accused could not believe the property to be their own; nor could they at the time believe that the real owner could not be found. But even in these circumstances conviction u/s 403, Penal Code would be possible only if it can be held that the log had been dishonestly misappropriated. All that has been found against the accused is that the log in question was in the possession of the accused for some time in the river itself. There has been no conversion of the log taken possession of. It is merely a case of retaining the property in possession. It may be argued that the accused had the intention of misappropriating it. The mere intention to misappropriate the property would not bring the case within the ambit of Section 403, Penal Code which requires dishonest misappropriation or conversion.

I do not think any case of misappropriation has been made out against any of the petitioners in the circumstances of this case, for they had no time to misappropriate it. They were caught with the log so soon after they had taken possession of it that its appropriation by them could not have conceivably taken place. They were still in the river. Besides it cannot be said that they knew or had the means of discovering the owner. There is no evidence to that effect. They may not have even seen the mark on it before the log was seized. The convictions of the petitioners cannot, therefore, stand. The petition is allowed, the convictions of the petitioners are quashed. The fine if paid shall be refunded.