
(1926) 05 AHC CK 0064
In the Allahabad High Court

Gunna and Others

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 27-05-1926

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 411

Citation : AIR 1927 All 80 : (1926) ILR (All) 687

Hon'ble Judges : Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Banerji, J

1. This is a revision by Gunna and three others. Gunna has been convicted of an offence punishable u/s 411 of the Indian Penal Code, in that he on the 13th July 1925, at village Kanwara, dishonestly retained three bullocks belonging to Phuley of village Birjwari, knowing or having reason to believe the same to be stolen property, and sentenced to one year's rigorous imprisonment, including one month's solitary confinement. Petitioners Nos. 2, 3 and 4 have been convicted u/s 380 of the Indian Penal Code for stealing the three bullocks from the house of Phuley, a cultivator, residing in mauza Birjwari, Thana Barsana, Muttra district. I will dispose of the case of these three first. They were seen in village Kunwara, one mile from mauza Birjwari, on the evening of the 12th of July. This village lies between Kama and Birjwari. They were seen early on the morning of the 13th July driving the bullocks from the forest of Kunwara towards the abadi of that village. They were found in possession of the bullocks in mauza Kunwara, which is in Bharatpur State. I am unable to say that the finding of the Courts below with regard to these persons is wrong. I dismiss the application.

2. The case against Gunna is that he was found in possession of these three bullocks by Sub-Inspector Gayan Chand of thana Kama, Bharatpur State in village Kunwara. There is nothing on the record to show that Gunna is a subject

of His Majesty the King; on the contrary, the evidence points to the fact that he is a subject of the Bharatpur State. The retention of stolen property at Bharatpur is the charge against him. In view of the ruling reported in *Queen-Empress v. Kirpal Singh* [1887] 9 All. 523, and by reason of Section 2 of the Indian Penal Code, I am of opinion that a subject of the Native State who is guilty of retaining stolen property within the Native State is not liable to be punished under the Indian Penal Code. There is no suggestion that he received the stolen animals anywhere within British India. On the contrary, the evidence of the witnesses from Bharatpur proves that the bullocks were brought by Dhundi, Jugla and Dham to his house at Kunwara.

3. Mr. Sanyal wished to argue the point that the joint trial of Gunna and, the other petitioners was illegal; but I cannot allow him to raise a point which was never raised in either of the Courts below and which does not appear to me to have any substance. Under these circumstance? I set aside the conviction of Gunna u/s 411 of the Indian Penal Code.