

(1912) 01 MAD CK 0041
In the Madras High Court
In Re: Gorle Kandungadu

Date of Decision : 08-01-1912

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 307

Citation : 13 Ind. Cas. 828

Hon'ble Judges : Sundara Aiyar, J; Spencer, J

Bench : Division Bench

Judgement

1. In this case the Sessions Judge of Vizagapatam has referred to this Court u/s 307, Criminal Procedure Code, Sessions Case No 28 of 1911, in so far as the case against the 2nd accused is concerned. He was charged with house-breaking by night and theft in a building. The only evidence as against him is that material object No. 47, one of the jewels stolen from the Prosecution 1st witness's house, was traced to his possession. The 1st accused stated that he had given it to the second accused and on the Police going to the house of the latter with the 1st accused and others he delivered it up. He denied, at the trial, that he gave up this jewel. But the evidence that he did deliver it must be accepted. The question is, what presumption arises against him in the circumstances? The property was traced to him about three weeks after the theft took place. The 1st accused stated that he had given it to him, and only one of the jewels stolen was found in his possession.

2. In these circumstances, we think the proper presumption is not that he was one of those who committed the theft, but that he received the jewel, knowing, or having reason to believe, it to be stolen property. The learned Sessions Judge, unfortunately, did not ask the Jury to find whether he was guilty of receiving stolen property. The Judge first states, quite correctly, that if a person is found in possession of stolen property soon after the theft and cannot explain his possession that person either stole the property or received it, knowing it to be stolen. This statement is in accordance with illustration (a) to Section 114 of the Evidence Act. The Judge then says: "generally speaking, the presumption is rather more in favour of the possessor being the thief than the receiver, unless there is any evidence, of course, which would prove the contrary." This

statement cannot be regarded as quite correct. Which of the two presumptions should be drawn in any particular case, whether of theft or of receipt of stolen property, would depend on the circumstances, the length of time that has elapsed after the theft, how much of the stolen property is found in the possession of the person in question, the circumstances which lead to the discovery, and other facts connected with the discovery of the property. The Judge's next statement is even more incorrect because he says: "There is nothing in this case to show or suggest that the accused received the property knowing it to be stolen. The question, therefore, you have to consider is, whether the possession in this case is sufficiently recent to raise the presumption that the accused are the thieves." It is certainly wrong to say that besides the discovery of stolen property in the possession of the accused there should be something to show that the accused received the property knowing it to be stolen to justify the Jury in inferring or presuming that the accused is guilty of the receipt of stolen property. This statement is, in fact, inconsistent with the first statement of the Judge that either presumption may be drawn from the fact of possession of stolen property. The result is, that the learned Judge did not leave to the Jury the question whether the accused could be convicted of receipt of stolen property. We think the Jury were right in not convicting the 2nd accused of theft. As he had been under detention for several months, we do not consider it necessary to make an order that he should be now tried for receiving stolen property.

3. The 2nd accused is acquitted of the offences of house-breaking by night, and theft in a building and he must be released from custody.