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(1897) 09 CAL CK 0013

In the Calcutta High Court

Nabi Baksh alias Ali Baksh Sheikh — APPELLANT

Vs

Queen-Empress — RESPONDENT

Date of Decision : 15-09-1897

Acts Referred:
Penal Code, 1860 (IPC) — Section 381

Citation : (1898) ILR (Cal) 416

Hon'ble Judges : Wilkins, J;Banerjee, J

Bench : Division Bench

Judgement

Banerjee and Wilkins, JJ.—The appellant Nabi Baksh alias Ali Baksh Sheikh was tried before the Sessions Court of Murshidabad for the offence of theft committed by him while he was a servant of the complainant, and committed after two previous convictions. He was found guilty by the jury and he admitted two previous convictions; and be has been sentenced by the learned Sessions Judge to two years'' rigorous imprisonment under Sections 381 and 75 of the Indian Penal Code.

2. He has appealed against the conviction and sentence; and the trial having been by the jury, the appeal lies only on a matter of law (see Section 418 of the Criminal Procedure Code); and this Court can alter or reverse the verdict, only if it is of opinion that the verdict is erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the jury of the law as laid down by him. [see Section 423, Clause (d)].

3. We are of opinion that the verdict of the jury in this case is erroneous owing to misdirection by the Judge. For the learned Sessions Judge in his charge to the jury said : "If the jury find that the accused removed the box to put the owner to trouble, that is causing wrongful loss to the owner, and the act is theft. The jury will consider the accused''s statement in this connection." The statement of the accused here referred to was this: "Bebi then told me to produce the things, I brought out this box, which I left concealed in the cowshed, to give a lesson to them." And the jury returned a verdict of guilty, finding "that the taking was with

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the intention of putting the owner to trouble."

4. Now the above charge and verdict are, we think, based on a clearly erroneous view of the law. It is true that to constitute the offence of theft it is not necessary that the taking should be permanent or with an intention to appropriate the thing taken, or that there should be wrongful gain to some one in addition to wrongful loss to the real owner [see Section 378 of the Indian Penal Code, Illustration (l), Queen-Empress v. Sricharan Chungo I.L.R (1895) Cal. 1017. But to constitute theft there must be an intention to take the thing in question dishonestly, that is, with intent to cause wrongful gain or wrongful loss, and can it be said that removing a box "to put the owner to trouble" is necessarily and in every case causing "wrongful loss"? The answer must, we think, be in the negative. For, otherwise a person, keeping concealed for a time a valuable thing belonging to a friend, who is a careless man, in jest for the purpose of causing him a little anxiety, or in earnest for the purpose of teaching him the salutary lesson of being careful, would be guilty of theft, a result which the Legislature could never have intended. No doubt the language of Section 23 of the Indian Penal Code which defines wrongful loss, and says a "person is said to lose wrongfully when such person is wrongfully kept out of any property as well as when such person is wrongfully deprived of property," might at first sight seem to create a difficulty in the way of accepting the view we take. But the difficulty is only apparent and not real. Of course, when the owner is kept out of possession with the Object of depriving him of the benefit arising from the possession even temporarily, the case will come within the definition. But where the owner is kept out of possession temporarily not with any such intention, but only with the object of causing him trouble in the sense of mere mental anxiety, and with the ultimate intention of restoring the thing to him without exacting or expecting any recompense, it is difficult to say that the detention amounts to causing wrongful loss in any sense.

5. We, therefore, hold that the verdict in this case was erroneous owing to a misdirection by the Judge, and we reverse it accordingly and acquit the appellant.

6. Having regard to all the circumstances of the case, we have not thought it necessary to order a retrial.

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