

(1958) 10 MP CK 0016

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 367 of 1957

Shobha Param Kachhi and Others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 06-10-1958

Acts Referred:

Evidence Act, 1872 — Section 114, 24, 27
Penal Code, 1860 (IPC) — Section 411, 412

Citation : AIR 1959 MP 125 : (1959) CriLJ 476 : (1958) ILR (MP) 892 : (1958) 3 MPLJ 752

Hon'ble Judges : B.K. Chaturvedi, J

Bench : Single Bench

Advocate : R.P. Sinha, for the Appellant; H.L. Khaskalam, Government Advocate, for the Respondent

Judgement

B.K. Chaturvedi, J.

This appeal has been preferred by six appellants: (1) Shobha s/o Parana, (2) Halkai s/o Bhure, (3) Bhagirath s/o Dallu (4) Girdhari s/o Nanhe, (5) Bhagirath s/o Pram and (6) Punna alias Puran Lodhi, against their conviction u/s 395, Indian Penal Code, and their sentences to five years' rigorous imprisonment each, by the Additional Sessions Judge, Damoh. This appeal arises from Sessions Trial No. 66 of 1957.

The dacoity is alleged to have been committed by these six appellants on the night of 11-10-1956 at the house of Bahrain {P.W. 1) at village Kanora in which cash, silver and gold ornaments were taken away. A report of the occurrence (Ex. P-1) was lodged on 12-10-1956. But it was in connection with investigation of another dacoity that took place on 17-12-1956 at the taparias for hutments) on the suburbs of village Piparia-Mishar that the police officers investigated this offence also and found that the dacoits were from village Kabirpur.

On 22-12-1956 the appellants are said to have made some discoveries and on

24-12-1956 they were arrested and produced before the Sub-Divisional Magistrate, Hatta, for recording their confessions. The said confessions were recorded on 26-12-1956. The evidence about the confessions and the discoveries is the same as adduced in Criminal Appeal No. 366 of 1957 (Bhagirath v. The State of M.P.) decided by me on 12-9-1958, arising out of Sessions Trial No. 65 of 1957,

The two witnesses, Ramcharan (P.W. 17) and Babulal (P.W. 19) deposed that every villager suspected of this dacoity was beaten by the Sub-Inspector of Police: that accused Mullu was made naked and asked to roam about in that condition; and that accused Budha was so much beaten that he passed stools.

So far as the confessions are concerned, they were made by the appellants two days after their arrest and four days after their interrogation and their informal arrest, if I may say so. I held in the other dacoity case, referred to above, that where once the existence of threat, assault, beating or improper inducement has been established, there is a presumption of its continuance, and the prosecution has to prove that the impression caused by the original inducement, beating, assault or threat was fully removed when the prisoner made the confession.

In the instant case, the impression created in the mind of the prisoners (appellants) by the torture of fear had not been removed in the short interval which elapsed between the beating given by the Sub-Inspector and the recording of the confession. I, therefore, discard the confessions altogether.

The Sub-Inspector ought to have known that law does not tolerate the achievement of a lawful purpose by unlawful means. Years ago, Niyogi J. pointed out in *Dinanath v. The Crown*, ILR (1940) Nag. 232 at p. 241: AIR 1940 186 (Nagpur)) that the police, in the strenuous task of investigation, do, in exceptional cases, succumb to the momentary temptation of employing coercive methods, and that this may well be set down to innate human frailty, but it must not be overlooked that it is to restrain such impulses that several sections of the Indian Penal Code came to be enacted. The police officers will be well-advised while engaged in the detection of crimes not to subordinate their detective skill to the alluring but treacherous means of torturing the suspects to extract clues to guide their course of investigation.

After discarding the confessions" what remains in the case is the discovery of the stolen property at the alleged instance of various appellants. The two witnesses, Ramcharan (P.W. 17) and Babulal (P.W. 19), to the seizure-memos and to the memoranda have not deposed the actual words of the appellants, and the uniformity in recital in various memoranda (Exhs. P-10, 14, 15, 17. 19, 20, 22, 24, 26, 29 and 31) is itself suspicious. The witnesses clearly deposed that appellant Bhagirath s/o Param was the first to be interrogated.

But what he said was not recorded at that time. All the discoveries by various appellants are said to be from open places, accessible to the public. It is only appellant Bhagirath s/o Dullu from whose house some property was recovered.

As the discovery of other appellants, except appellant Bhagirath s/o Dallu, is the same as in the previous case which I have dealt with in Criminal Appeal No. 366 of 1957, referred to above, and as all these discoveries are from places which are open and accessible to all, they do not, in the least, inspire confidence and must be discarded on the same grounds which are set out in the previous case (Cr, Appeal No. 366 of 1957).

The case of discovery at the instance of appellant Bhagirath s/o Dallu is entirely different. Several articles were recovered according to the two witnesses, Ramcharan (P.W. 17) and Babulal (P.W 19) from the house of this appellant: e.g., one gold addha, some Chooras and chhallas (silver), four rupee tharra coins and some tidana. This has been identified to be the stolen property by Bahrain (P.W. 1} and other witnesses. This is sufficient to connect the appellant Bhagirath with the crime. In all such cases, the question arises: Whether the appellant (accused) should be convicted for an offence of dacoity, or for an offence u/s 412. or for a lesser offence u/s 411, Indian Penal Code?

The earliest case is reported in *The Emperor v. Sheikh Ncamatulh* 17 C. W.N. 1077. In that case, it was stated by a Division Bench (Jen-kins, C.J. and Sharfuddin J.) that the Court might presume not merely theft or receipt of stolen property but also murder with which the accused was charged. Their Lordships, then, quoted an extract from Wills on Circumstantial Evidence that

"the possession of stolen goods recently after the loss of them, may be indicative not merely of the offence of larcency, or of receiving with guilty knowledge, but of any other more aggravated crime which has been connected with theft. This particular fact of presumption commonly forms also a material element of evidence in cases of murder; which special application of it has often been emphatically recognised."

This has been followed by a Division Bench of the Calcutta High Court in *Mani Krishna Sen Gupta Vs. Emperor*, A Division Bench of the Nagpur High Court in AIR 1949 277 (Nagpur) relied upon the latter Calcutta ruling. In *In re In re Dhyani Gope and Others*, it was laid down that illustration (a) to Section 114, Evidence Act, only mentions a case of ordinary theft, but its principle applies not only to cases of ordinary theft, but to cognate offences such as dacoity and robbery.

The position, therefore, is that when the necessary facts have been established from which the presumption may be drawn, the presumption that should be drawn is that the accused knew of the manner in which the articles in question had been taken away from the possession of the owner, that is to say, in a case of ordinary theft that they had been stolen, and in a case of dacoity that they had been stolen in the course of a dacoity. It was. therefore, held in that case, which was a case of dacoity, that in the absence of reasonable explanation by the accused the presumption u/s 114 would arise and the accused must be presumed to know that the articles were stolen in the course of a dacoity and

that a conviction u/s 412 would be proper in such a case. This case has been relied upon by the Allahabad High Court (Lucknow Bench) in Chandra Pal and Others Vs. State, The same view was expressed in Queen-Empress v. Sami ILR 13 Mad. 426 , and a perusal of the judgment of the Supreme Court in Wasim Khan Vs. The State of Uttar Pradesh, leads to the conclusion that this view has been supported in it.

The other view is that it will not be safe to convict an accused u/s 395, or u/s 412, Indian Penal Code, where the only evidence adduced is that of recovery of stolen property from his house. The question has been discussed at some length by a Division Bench of the Bombay High Court in Emperor Vs. Chavadappa Pujari, where it was observed that where a person is found in recent possession of property stolen in a dacoity, the presumption u/s 114, illustration (a), would be that the person is either a dacoit or a receiver of stolen property.

But this presumption is not of one definite offence but of an alternative offence because possession of stolen property by itself is not sufficient to prove participation in the offence of theft. It can only go to corroborate other independent evidence. If there is no such evidence, the conviction may be of the alternative offence and the punishment only for the lower offence of possession u/s 72, Penal Code.

Justice Lokur, however, observed that the principle laid down in Section 114 is of wide application and not limited to the illustrations mentioned therein and the presumption u/s 412, Indian Penal Code, may be made from the recovery of stolen property transferred during the commission of a dacoity from the possession of the accused soon after the commission of the crime. Divatia J., who gave the leading judgment in that case, made the following observations:

"No general principle can be laid (Town that if the offence was dacoity, the receiver of the property taken in dacoity must always be guilty under Sec, 412. Penal Code. For these reasons I am un-able to hold, as the learned Judge below has done, that in a case of dacoity the presumption would always be that the receiver of property taken in dacoity is guilty u/s 412. In most cases of mere possession of such property. the presumption would be of the lower offence u/s 411." A Division Bench of this Court, to which I was a party, followed these observations of (Divatia J.) i"i State Government, M.P. v. Sheoprasad. Cri. App. No. 328 of 1956, D/- 30-9-1957. I still adhere to this opinion.

In Sumer Vs. Rex, Ra-ghubar Dayal J. observed that illustration (a) to Section 114 does not limit the scope of the Section and it is possible to raise a presumption in certain circumstances that a person found in possession of property stolen in a dacoity was either a dacoit or had received the property knowing it to have been stolen in a dacoity. Such a presumption, however, cannot be raised merely on account of a person being found in possession of property stolen in a dacoity.

Though another learned Judge (Randhir Singh J.) seems to have dissented from

this earlier view in Chandra Pal and Others Vs. State, still the reasoning in that case, though supported by a decision of the Orissa High Court in Bama Jena and Another Vs. The State, does not appeal to me. In my opinion the view of Justice Divatia in Emperor Vs. Chavadappa Pujari, , (cited supra) and that of Raghubar Dayal J., in Sumer Vs. Rex, (cited supra) seems to be the correct and proper view.

The Supreme Court in Sanwat Khan and Another Vs. State of Rajasthan, which was a murder case, also laid down that where the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murderer.

Their Lordships also observed that from the solitary circumstance of the unexplained recovery of the two articles from the houses of the accused the only inference that can be raised in view of illustration (a) to Sec, 114 is that they are either receivers of stolen property or were the persons who committed the theft, but it does not necessarily indicate that the theft and the murders took place at one and the same time.

In the instant case, there is no evidence either of identification of appellant Bhagirath s/o Dallu, or of his being seen near the place at the time of dacoity, or of joining a gang. The only evidence is that some ornaments, which were stolen from the house of Baliram (P.W. 1) on the night of 11-10-1956 were recovered from the possession of appellant Bhagirath s/o Dallu. Under these circumstances, it seems to be safe to convict him neither u/s 395 nor u/s 412, but only u/s 411, Indian Penal Code.

The result is that I allow the appeal of appellants Shobha, Halkai, Girdhari, Bhagirath s/o Param and Punna alias Puran Lodhi, set aside their conviction and the sentences passed on them and Order that they be acquitted in this case.

I allow the appeal of appellant Bhagirath s/o Dallu to this extent that I alter his conviction from one u/s 395 to that u/s 411, Indian Penal Code, and reduce the sentence to two years" rigorous imprisonment.