courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 16/12/2025

(1989) 03 CAL CK 0003

Calcutta High Court

Case No: C.R. No. 2356 of 1983

Lachman Singh		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: March 1, 1989

Acts Referred:

- Calcutta Police Act, 1866 - Section 54A
- Constitution of India, 1950 - Article 21
- Evidence Act, 1872 - Section 102
- Penal Code, 1860 (IPC) - Section 26

Citation: 93 CWN 1035

Hon'ble Judges: Amulya K. Nandi, J; A.M. Bhattacharjee, J

Bench: Division Bench

Advocate: Ananga Kumar Dhar, Jayanta Kumar Biswas and Rita Sana, for the Appellant; Sasanka Ghosh, for the Respondent

Judgement

A.M. Bhattacharjee, J.

The impugned order of conviction, passed by the trial Court and affirmed in appeal, is u/s 4(1) of the Bengal Criminal Law (Industrial Areas) Amendment Act, 1942, which provides that "whoever has in his possession... anything which there is reason to believe to have been stolen or fraudulently obtained, shall, if he fails to account for such possession... be liable to fine which may. extend to Rs.100/-, or to imprisonment for a term which may extend to 6 months". The order of conviction has been assailed in this revision, mainly on the ground that the prosecution has not discharged its onus to prove that there is reason to believe that the goods were stolen or fraudulently obtained and that being so, the accused had no liability to account for his possession, and that even though the accused tempted, though not required to do so, to account for such possession by adducing evidence, the Courts below were wrong in looking into and scrutinizing such evidence and to hold therefrom that the goods could be reasonably believed to be stolen or fraudulently

obtained and that the accused failed to account for them. There are a number of decisions of this Court under the provisions of Section 4(1) of the Bengal Criminal Law (Industrial Areas) Amendment Act, 1942, as well as other allied provisions, e.g., Section 54A of the Calcutta Police Act of 1866, to the effect that before the accused can be required to account for possession, the initial onus to prove that there is reason to believe that the goods in his possession were (sic)oleri or fraudulently obtained is to be discharged by the prosecution. We do not think that any citation is at all necessary for so obvious a proposition which emerges not only from the relevant provisions extracted hereinabove, but which is also firmly grounded in our law of evidence. Under that general law whoever prosecutes a proceeding, civil or criminal, is to bear the burden to prove the case, for, as pointed out in Section 102, Evidence Act, "the burden of proof lies on that person who would fail if no evidence at all were given on either side". Under the lex scripts of the Evidence Act, there is no burden of proof and, as would appear from Section 3 thereof, a fact is said to be "proved", both for the purpose of civil as well as criminal proceedings, "when, after considering (sic) materials before it, a Court either believes it to exist, or considers its existence so probable, that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists". But it is the extreme anxiety and the very high regard of our laws for personal liberties of man, now enshrined in Article 21 of our Constitution, that has made all the difference between the standard of proof in a Civil and in a Criminal case and since a conviction in a criminal case may very often go to abridge or affect that personal liberty, the law of evidence in criminal proceedings has stood supplemented By the doctrine of proof beyond reasonable doubt.

2. Be that as it may, while the prosecution may, as it obviously does, have the burden of proving the guilt of the accused, as (to borrow from Section 102 of the Evidence Act) it would fail if no evidence at all are given on either side, this is never the law that when evidence has in fact been adduced by both the prosecution and the defence, a Court cannot hold the charge to be proved on the basis of the evidence adduced by the defence, simply and solely on the ground that no such evidence has come from the side of the prosecution and that the evidence adduced by or on behalf of the prosecution, by itself, does not prove the guilt. The accused, having no onus to prove innocence, may be under no obligation to adduce any evidence. But if he chooses to adduce evidence, though not required to do so, and such evidence proves his guilt, he can not be heard to say that the Court is to exclude such evidence from consideration as he was to adduce, and could have adduced, none. We would like to emphasise even at the cost of repetition, that if. the accused, though having no onus to do so, has nevertheless adduced evidence, the Court, not only may, but rather is under an obligation to take into consideration all such evidence and may base its order of conviction thereon, even though the prosecution has not, on its own, succeeded to prove the charge.

3. To come to the case at hand, all that Section 4(1) of the Bengal Criminal Law (Industrial Areas) Amendment Act, 1942 requires is that the Court must find that there is reason to believe that the goods are stolen or fraudulently obtained before it can convict the accused for his failure to account for possession. If in a given case the prosecution fails to adduce satisfactory evidence to enable the Court to come to such a finding, the Court would have then no case to proceed with and must therefore fold its hands. But where, as here, the accused has nevertheless chosen to adduce evidence and such evidence enables the Court to hold that there is reason to believe the goods to be stolen or fraudulently obtained, the Court would be perfectly justified to convict the accused on such evidence if he fails to account for possession thereof. Accepting the doctrine that an offence must be proved beyond reasonable doubt, we have never understood it to be the law that even where the Court can and does find it to be so proved from the evidence adduced by the defence, the Court must still bang the prosecution solely on the ground that it could not, on its own, bring the charge home.

4. As we have already indicated, there can be no manner of doubt that the impugned conviction u/s 4(1) of the Bengal Criminal Law. (Industrial Areas) Amendment Act, 1942 can be sustained only if the Court has found that there is reason to believe that the goods in the possession of the accused were stolen or fraudulently obtained and that the accused has failed to account therefor. But all that we say is that both the belief as to the goods being stolen or fraudulently obtained and the finding as to the failure of the accused to account therefore can be grounded on defence evidence alone, even though the evidence adduced by the prosecution, by itself, can not sustain such belief and the finding as to the failure to account. Take, for instance, a case where the evidence adduced by the prosecution does not warrant framing of any charge and if still such a charge is framed, the accused may very well move to get it quashed. But if after such a charge is framed, even though on insufficient material, and the trial is proceeded with and the accused chooses to adduce evidence and such evidence proves the charge, the accused can not obviously claim to be acquitted simply and solely on the ground of the charge having been framed on sufficient materials and the prosecution not being able to prove the charge by its own evidence. The principle that when evidence is adduced by both the parties, the question of onus may lose relevance and may pale into insignificance, is not a doctrine peculiar to civil cases only, but may apply to criminal cases as well. The general thesis that the prosecution must prove its case would stand out-stretched to a breaking point if it is held that the prosecution must nevertheless fail, even though the defence evidence establishes the guilt.

5. In the case at hand, the Court has found the accused to be a low-paid employee of the Air Force, but still to possess 58 items of property including 8 Radio-sets, 8 Wrist Watches, 2 bicycles and a large quantity of gold and silver ornaments, utensils and garments of Air Force Officers. Assuming that the prosecution, by its own evidence,

could not prove that there is reason to believe that ail these articles were stolen or fraudulently obtained, the accused himself has come out with his case that all these were pledged to his wife carrying on money-lending business and examined his wife, his son and also some of the alleged pledgers as his witnesses. Both the Courts have concurrently found the alleged defence of money-lending and pledging of articles to be wholly unreliable and to have completely failed. If in the light of this unacceptable defence case, on the defence evidence and the surrounding circumstances, the Courts below have found that there is reason to believe that these articles were stolen or fraudulently obtained and possession thereof could not be accounted for by the accused, we do not think that the Courts below have committed any such error warranting our intervention in revision. As explained in Section 26 of the Penal Code, "A person is said to have ''reason to believe'' a thing, if he has sufficient cause to believe that thing, but not otherwise". If on the materials as aforesaid, the Courts have found sufficient cause to believe that the goods were stolen or fraudulently obtained, no revisional interdiction would be justified, unless the finding could be branded to be so perverse as could not be arrived at by any Court. We have not been able to regard the finding to be suffering from any such perversity, and as already indicated, the fact that such finding could not be arrived at on the prosecution evidence alone, but was solely grounded on the defence evidence, can be no ground for interference. It is true that the trial magistrate in convicting the accused has used the expression "there is reasonable suspicion to believe that those were stolen or fraudulently obtained", instead of the expression "there is reason to believe". But the judgment as a whole and the user of the word "believe" have left us with no doubt that the Court found "reasons to believe", but used inappropriate expression. We do not think that we can interfere in revision simply because the Court below could not use the appropriate word, when we have no doubt as to what was sought to. be conveyed by the Magistrate. We accordingly decline the revision so far it relates to the order of conviction.

6. As would appear from the provisions of Section 2 of the Bengal Criminal Law (Industrial Areas) Amendment Act, no conviction can be made u/s 4(1) thereof unless the place of occurrence has been declared to be an ''Industrial Area'' by notification u/s 2 and it was sought to be urged at some stage on behalf of the accused-petitioner that there is nothing to show that the place of occurence in this case has been so declared Strangely enough, the prosecution, in spite of our granting sufficient time for the purpose, has not been able to produce any such Notification and even all the attempts on our part to obtain assistance from the Department of the Legal Remembrancer proved entirely futile. While we do not delight in censuring them, how we wish that these departments of the prosecuting agencies and of the Legal Remembrancer were better-organised.

7. We have, however, been to trace the relevant Notification being No. 2260 PI, dated 29th June, 1942, published in the Calcutta Gazetter, Extraordinary, dated 27th june, 1942, page 127, declaring the whole of (the then) Province of Bengal to be "an

Industrial Area" for the purpose of this Act, excluding only the term of Calcutta and the Station of How-ran, and, therefore, this question need not detain us. It seems that the whole of the then undivided province\\of Bengal, which was then overwhelmingly much more rural than industrial, was industrialised by a legislative flat. As to the sentence of 3 month''s imprisonment, imposed by the trial Court and affirmed by the appellate Court, we have, however, though it fit to alter the same for the reasons stated below. The occurrence took place as early as in 1976, the accused was arrested and then released on bail after some days of pre-trial detention, convicted by the trial Court in 1983, which has been affirmed by the appellate Court in the same year. He was suspended and has thereafter been dismissed from his service suffering all the consequences of such dismissal. He moved this Court in revision in 1983 and we have taken more than five years to dispose of this criminal revision for no justifiable reason, thus keeping him under the constant threat and consequential stress and strain of a sentence of rigorous imprisonment. All the articles seized have been confiscated and that order shall remain undisturbed. The totality of these circumstances has persuaded us to hold that a sentence of fine now should made the ends of justice. We accordinlgy set aside the sentence of imprisonment and sentence the accused to pay a fine of Rs. 100/-, in default to suffer rigorous imprisonment for one month. The revision is accordingly disposed of. Records, with a copy of our order, to go down at once. The accused is to surrender to his bail bond forthwith.

Amulya Kumar Nandi, J.

I agree.