

Surendra and Others Vs The Emperor

Cr. Appeals Nos 901 and 902

Court: Calcutta High Court

Date of Decision: Feb. 10, 1937

Judgement

Cunliffe, J.

These appeals of Surendra and Hara Narayan were admitted together on the ground of sentence. The Appellants pleaded

guilty respectively to receiving and being in possession of stolen goods, knowing that these goods had been the subject of a dacoity. That is one of,

what I may call, the artificial sections of the Indian Penal Code and it is rather difficult to see why, if they were well-advised, they wanted to plead

guilty to merely receiving the stolen goods. But we are told that they were defended and, although we think that the sentence which the learned

Judge gave to each of them, viz., four years" rigorous imprisonment, is much too much in the circumstances as the property in their possession was

not of the value of more than Rs. 32, we are prepared to reduce their sentences to one year"s rigorous imprisonment each. The Appellant in No.

902, whose name is Kripa Hati, was also convicted under sec. 412 and he received six years" rigorous imprisonment for being in possession of a

small quantity of property, knowing that it had been dacoited. He is a brother of one of the confessing dacoits and it seems to us that the learned

Judge in dealing with his case went a little too far in his direction to the jury when he told them that they might presume from the evidence in the

case that he knew all about this dacoity when he produced the goods at the time of the search by the Police. There was no evidence that he knew

about the dacoity, although his conduct was suspicious and I think that it would have been safer for the learned Judge to have only told the jury that

they could without direct evidence presume a guilty knowledge with regard to the stolen nature of the goods. But I do not think he was justified in

suggesting to the jury that they might presume that this man knew of the dacoity and thus was guilty of an offence under sec. 412. There is no doubt

that sec. 412, as I have already stated, is an artificial section and I think it should only be employed where there is distinct evidence that the person

who is accused under the section is definitely a member of the band of dacoits and I think it is intended for the criminals of that character. The

result of the jury finding this man guilty under sec. 412 is that the learned Judge has sentenced him to six years" rigorous imprisonment for being in

possession of stolen property worth a few rupees. There is no minimum punishment to the section, but there is a maximum and this six years"

rigorous imprisonment sentence is above the maximum sentence laid down for an offence under sec. 411. Therefore, the misdirection of the

learned Judge, if we are right in thinking that it was a misdirection, loaded the Appellant with an extra three years on the most serious aspect that

the Court could take of this crime. In all the circumstances, we think that he should only be sentenced to six months" rigorous imprisonment and we

reduce the six years to six months under sec. 411, altering the conviction from sec. 412.

Henderson, J.

2. I agree. This is a question which is frequently coming before Criminal Courts. It is clear that if the jury are willing to infer from recent possession

that the accused is himself the thief and if there is evidence to show that the property was actually stolen in a dacoity, it automatically follows that

the accused person can be convicted of dacoity. Those considerations do not apply to a case such as the present, where ex hypothesi the accused

was not present when the property was actually stolen and has merely been charged as a receiver. The presumption referred to in sec. 114 of the

Indian Evidence Act is based upon long experience of the world and on commonsense. But, in my opinion, it is going a good deal further than that

to say that you can presume that the person in whose possession the articles are found knows or has reason to believe that they were stolen in a

dacoity. In the first place, as my learned brother has pointed out, dacoity is an absolutely arbitrary offence invented by the Indian Penal Code. I do

not suppose that most receivers have the remotest idea what it is. It is further necessary to presume that a person who ex hypothesi was not there

knows whether four men or five men took part in the occurrence, whether force was used or not and so on. In my opinion, that would be

absolutely opposed to commonsense. I therefore agree that if the prosecution want to establish an offence under sec. 412, they must bring some

evidence to show that the accused knew or had reason to believe that the property was stolen in the course of the dacoity.