AIR 1925 Cal 666 : (1925) ILR (Cal) 223

Calcutta High Court

Case No: None

Satya Charan Manna		APPELLANT
	Vs	
Emperor		RESPONDENT

Date of Decision: July 23, 1924

Acts Referred:

- Evidence Act, 1872 - Section 114(a)

Citation: AIR 1925 Cal 666 : (1925) ILR (Cal) 223

Hon'ble Judges: Newbould, J; Mukerji, J

Bench: Division Bench

Judgement

Newbould and Mukerji, JJ.
The two appellants before us and one other accused, Jahar Bhumij, were tried before the Sessions Judge of Hooghly and a jury on charges of having committed dacoity in the house of Balaram Mukerji on the 12th August last, and the two appellants were also charged u/s 412 with having dishonestly received and retained stolen property which they knew and had reason to believe to have been transferred by the commission of dacoity. The jury found Jahar not guilty by a majority of three to two. They unanimously found the two appellants not guilty of dacoity, and by a majority of three to two found both of them guilty u/s 412 of the Penal Code. Under this Section the appellants were sentenced to three years" rigorous imprisonment.

2. For the prosecution evidence has been given that the dacoity was committed on the 12th August last, at about 3 A.M., in the house of Balaram in Bhastara, The evidence in support of the charges on which the appellants have been convicted is to the effect that in the possession of each of them was found an article that was stolen by the dacoits. The houses of these two appellants were searched on the 6th September 1923. In the house of Jatindra Nath Bag a glass chimney was found, which has been identified by Ashutosh Mukerji, P. W. 7, as his property. In the house of the appellant, Satya Charan Manna, a gold ring was found, which has been identified by the witness Rahamani Debi, P. W. 3, as

an article pledged with her by Sindhu Dulani about three years previously.

3. Several points have been urged at the hearing of this appeal, but the point with which we are most impressed is that there has been serious misdirection as to the nature of the presumption arising from the possession of these articles. The learned Sessions Judge has, we hold, seriously misdirected the jury on this point. In explaining Illustration (a) to Section 114 of the Evidence Act he has given the jury the following direction:--"The Court may presume that a man who is in possession of stolen goods, soon after the theft, is either the thief or has received the goods knowing them to be stolen. When it is proved, or may be reasonably presumed, that the property in question is stolen property, the burden of proof is shifted, and the possessor is bound to show that he came by it honestly, and if he fails to do so the presumption is that he is the thief or the receiver according to circumstances. I have already referred to the defence of these two accused. If the gentlemen of the jury find that the accused have failed to account for their possession, then they may presume that the accused Jatin Bag has come by Ex. XI, chimney, dishonestly, and that Satya Manna has come by Ex. IX, gold ring, dishonestly."

4. The objections to this description of the law are firstly, that before a presumption under this section can arise, it must be proved that the goods found in the possession of the accused have been stolen. No such presumption will arise in a case when it may reasonably be presumed that the property in question is stolen property. But the more serious objection is that the jury were told that the burden of proof was shifted. In this connection we may refer to the case of Hathem Mondal v. King-Emperor (1920)24 C. W.N. 619., in which the learned Chief Justice pointed out that in a criminal case the onus is on the prosecution to prove beyond reasonable doubt the guilt of the accused. That onus never changes. Reference was then made to the judgment of the Lord Chief Justice of England in the case of Reg. v. Isaac Schama (1914) C. A R. 45, 49., and the remarks there made are fully applicable to the present case. That the law in India is similar to the law in England in this case is clear from the words used in Illustration (a) to Section 114, "may be presumed" and from the definition of those words given in Section 4 of the Evidence Act. The error of the learned Sessions Judge is not confined to his remarks in this particular passage. Reading his charge as a whole, it is evident that it must have left an impression in the minds of the jury that if they found that these two articles were properly identified, as having been the properties which were stolen at the time of the dacoity, and were found in the appellants'' possession, they were bound to presume the b appellant''s guilt. The jury were not properly directed that it was their duty to weigh all the circumstances of the case, consider the accused''s explanation and then decide whether or not they should make such a presumption. We, therefore, hold that this was a serious misdirection, which has in fact caused a miscarriage of justice. Our attention has been drawn to certain points in the evidence in favour of the appellants, on the question of identification, to which the attention of the jury was not drawn. We do not think that in this respect there was serious misdirection. On the whole the evidence has been fairly put to the jury and, though every point in the appellants'' favour has not been put to them, these

are matters of non-direction which would not justify our reversing the finding of the jury.

5. In the case of the appellant, Jatindra Bag, there has-been serious misdirection on another point. The principal witness against him is the witness Ashutosh Mukerji. He was, it appears, suspected of having himself either taken part in, or instigated, the actual dacoity. He was in fact arrested, though he was never sent up for trial. But at the trial it was a case for the Crown, as argued by the Public Prosecutor, that this, witness was probably concerned in the dacoity. This being so, the jury should have been directed not to accept his evidence without the most careful scrutiny-He may not actually have been an accomplice, but he-was little better than an accomplice witness. It would have been dangerous to have accepted his evidence without corroboration. Though there is corroboration as to the identity of the chimney, there is none as to the fact that the chimney was actually in the room from which it was alleged to have been taken by the dacoits. On the other hand, it has been shown to us that there is evidence contradicting'' Ashu''s statement that it was in this room. It is not necessary to deal with the other points that have been argued on this appeal.

6. For the reasons we have given we must hold that the trial was vitiated by serious misdirection. Having regard to the nature of the evidence, and more particularly to the fact that the verdict convicting the appellants was by a bare majority of one, we do not think that it is necessary or desirable that there-should be a re-trial.

7. We accordingly allow this appeal. We set aside the conviction and sentence passed on the appellants, and acquit them. The appellant who is in jail should be released at once, and the appellant who is on bail should now be discharged from his bail bond.