1906

BHAGWAN SINGH v. HARMUKH.

The following order was passed :—

AIKMAN, J.—The applicant filed a complaint in Court charging Harmukh and Baldeo with an offence under section 457 of the Indian Penal Code. The Magistrate, without issuing process for the attendance of the persons complained against, dismissed the complaint under section 203 of the Code of Criminal Procedure, and under section 250 ordered the complainant to pay Rs. 50 compensation to each of the persons complained against. In my opinion the order is not justified by the terms of section 250, inasmuch as there was neither an order discharging nor an order acquitting the accused. I may add that the reasons given by the Magistrate for holding the complaint to be false are not to my mind at all convincing. I set aside the order of the Magistrate directing Bhagwan Singh to pay compensation. Any amount paid under that order must be refunded to him.

1906
November 10.

APPELLATE CRIMINAL.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

EMPEROR *v.* SUGHAR SINGH AND ANOTHER.*

Act No. I of 1872 *(Indian Evidence Act), section* 114—*Presumption—Possession of stolen property.*

Held that the finding in the possession of a person six months after the commission of a dacoity of articles stolen in that dacoity, such articles consisting of jewelry of a very ordinary type and by no means distinctive appearance, is not sufficient to form the basis of a conviction for participation in the dacoity. *Queen-Empress* v. *Burke* (1) and *Ina Sheikh* v. *Queen-Empress* (2), referred to.

On the 10th of March 1905, a dacoity was committed in the house of one Latore in a village in the district of Jhansi. In September of the same year the houses of Sughar Singh and Nethi, two subjects of the Gwalior state, were searched on suspicion of their being concerned in another dacoity. In Sughar Singh's house a pair of bangles and a frontlet were found, which were subsequently identified as having belonged to Latore. In Nethi's

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* Criminal Appeal No. 443 of 1906.

(1) (1884) I. L. R., 6 All., 224. (2) (1885) I. L. R., 11 Calc., 160.

house nothing was found, but in an empty house adjoining it were found a pair of earrings and a necklet which were identified as the property of Latore. On this evidence, which was the only evidence to connect the two men with the dacoity of the 10th March 1905, Sughar Singh and Nethi were convicted by the Sessions Judge of Jhansi under section 395 of the Indian Penal Code. Against this conviction they appealed to the High Court.

Mr. *G. W. Dillon*, for the appellants.

The Government Pleader (Maulvi *Ghulam Mujtaba*), for the Crown.

STANLEY, C.J., and BURKITT, J.—This is an appeal of two persons, namely, Sughar Singh and Nethi, who were convicted by the learned Sessions Judge of Jhansi of the offence of dacoity punishable under section 395 of the Indian Penal Code. The dacoity in respect of which these persons were convicted took place on the 10th of March 1905. The only evidence to connect the appellants with the crime lay in the fact that about six months after the date of the dacoity, namely, in September 1905, certain ornaments which were proved to have been carried away in the dacoity were found in the house of Sughar Singh, and other ornaments were found in an empty house adjoining the house of Nethi. The ornaments found in the house of Sughar Singh consisted of a pair of bangles and a frontlet, and in the empty house adjoining the house of Nethi a pair of earrings and a necklet were also found. The learned Sessions Judge convicted the appellants of dacoity holding that he was justified under the provisions of section 114 of the Evidence Act in presuming that they took part in the dacoity from the fact that property proved to have been stolen in the dacoity was found in their possession and was not accounted for. The illustration allowing the presumption which the learned Sessions Judge deemed applicable to the case runs as follows:—

"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, unless he can account for his possession."

An important word in the illustration is the word "soon." In the case of the appellants the goods which were found in their possession were not found until six months from the date of the dacoity had elapsed. It appears to us that it is impossible to say,

1906

EMPEROR v. SUGHAR SINGH.

particularly having regard to the nature of the ornaments which were discovered, which are of a very common description and would readily pass from hand to hand, that the case is covered by the illustration in question. In view of the length of time which elapsed from the date of the dacoity, we do not think that the appellants ought to have been called upon to explain their possession of the articles. We have not been referred to any case in which the presumption which may be raised under section 114 was raised where goods were found after such a lapse of time. In the case of *Queen-Empress* v. *Burke* (1) it was held that the persumption did not arise in a case in which a stolen pocket handkerchief was found in the possession of the accused more than a month after the date of the theft. Again, in the case of *Ina Sheikh* v. *Queen-Empress* (2), in which a common brass drinking cup was stolen in October 1883 and was found in the possession of the accused in September 1884, it was held that the possession was not such recent possession as came within the purview of the illustration and that the presumption against the accused was so slight that taken by itself he ought not to have been called upon to explain how its possession was acquired. We consider it unnecessary to consider the question whether in view of the fact that Sughar Singh and Nethi are not British subjects, they could be convicted of an offence under section 412 in respect of property found in their possession in Gwalior, but actually stolen in British India. We are of opinion that the evidence did not justify the conviction of these two appellants for the offence of dacoity, nor would it, if the charge had been altered into a charge under section 412, have justified a conviction under that section. We therefore allow the appeal, set aside the conviction of Sughar Singh and Nethi and, acquitting them, direct that they immediately be released.

(1) (1884) I. L. R., 6 All., 224. (2) (1885) I. L. R., 11 Calc., 160.