

APPELLATE CRIMINAL.

1927
June, 2.

Before Sir Grimwood Mears, Knight, Chief Justice and Mr. Justice Lindsay.

EMPEROR *v.* MANGU.*

Act No. XLV of 1860 (Indian Penal Code), section 215—Essential ingredients of the offence defined.

The primary aim of section 215 of the Indian Penal Code is to punish all trafficking in crime by which a person, knowing that property has been obtained by crime, and knowing the criminal, makes a profit out of the crime, while screening the offender from justice.

Where a man undertook to attempt to recover certain horses which were believed to have been stolen, and took money for so doing; but there was no evidence to show that he had any knowledge of who the thief was, or that he was making any attempt to screen the thief from justice, or that he failed to use all means in his power to cause the offender to be apprehended, it was *held* that he could not rightly be convicted of the offence defined in section 215.

THE facts of this case are fully stated in the judgment of the Court.

The Government Advocate (Pandit *Uma Shankar Bajpai*), for the Crown.

Pandit *Kashi Narain Malaviya*, for the accused.

MEARS, C.J., and LINDSAY, J. :—On the 1st of October, 1926, a mare belonging to one Bhagwant Singh of mauza Patti Tek Chand disappeared, and on the same night a mare belonging to one Budhu Jat also disappeared from an adjoining mauza, Chhajaura. Although there is no evidence that these animals were stolen, we propose for the purposes of this case to assume that they were stolen.

*Criminal Appeal No. 464 of 1927, by the Local Government, from an order of Jogendra Nath Chaudhri, Additional Sessions Judge of Bijnor, dated the 18th of February, 1927.

The identity of the thief, or thieves, was not known; but one Mangu was suspected. He is the respondent to a Government appeal today, he having been charged, in the events which we shall set out in a few moments, with having committed an offence under section 215 of the Indian Penal Code. He was tried for that offence by a Bench of first class Magistrates of Bijnor and sentenced to one year's rigorous imprisonment. From that conviction he appealed, and the learned Additional Sessions Judge, on the 18th of February, 1927, allowed the jail appeal of Mangu and directed his acquittal.

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The Local Government, believing that acquittal to have been a miscarriage of justice, appealed and that is how the matter comes before us today on the Government appeal.

We can dispose of the judgement of the Additional Sessions Judge quite shortly by saying that he disbelieved the evidence given and pointed out one or two small discrepancies. He proceeded entirely on facts, and did not believe in the good faith of the prosecution. He thought it to be a manufactured case, because the prosecution believing Mangu to have been the thief, but having no evidence against him, were endeavouring to secure his conviction by means of section 215. We do not agree with the Sessions Judge in the way in which he approached the case, but that has become a matter of very little importance today, because from the early opening of this appeal the learned Government Advocate was asked to consider with us the somewhat intricate nature of that section, and to point to the evidence on the record which would satisfy all the requirements for a conviction under it. We have come to the conclusion that all the requirements for a conviction under section 215 do not exist, and that as a matter of law Mangu is entitled to be acquitted.

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Section 215 is one which in practice very rarely comes before the courts, and it is desirable first that we should set out what we believe to be the facts of this case as disclosed by the evidence, and then we should discuss section 215 and show how the prosecution must, in our opinion, have failed from the outset.

Now, undoubtedly on the discovery of the loss of these horses Mangu was suspected. We think there can be no doubt about that, and we think that there being no evidence whatever against him, it was concluded that the best way to regain possession of the missing animals was to offer Mangu Rs. 30 if he were able to recover them. We cannot of course attach any weight to the statement that Mangu was suspected, and we have got to deal with Mangu entirely upon the evidence as it appears on the record. Now the evidence is this. Bhagwant Singh told the court how on the night of the 1st of October, 1926, his mare disappeared. He said that he had a suspicion of Mangu and other persons, and he being a zamindar of some importance in the neighbourhood, told the people of his own mauza and of the mauza from which the mare of Budhu had been taken, that they should trace out the animals, and that he was quite willing to defray the expenses. Now there was nothing improper in Bhagwant Singh making an offer to anybody that he would pay for the tracing out of the mares. That being the position, some 5 to 7 days after, Mangu, the accused, came into the village. He is a seller of water-nuts. Chhajju Singh spoke to him, and the two phrases which he used show in themselves that he was endeavouring as politely as he could to suggest to Mangu that it might be possible for him (Mangu) to recover the mares without difficulty, really on the hypothesis that Mangu had been one of the offenders. The actual translation of the original is not as it appears at page 10, line 47 onwards, in the text. The actual words which

Chhajju Singh says that he used are as follows :—“ *Teri sudh men kahin yah ghorin hon to pattah chala dei.*” (If you happen to know where these horses are, then furnish a clue to them.) Mangu is said to have replied that a clue would, or might, be found but it would require money. Now there was no impropriety in either the request of Chhajju Singh or in the answer of Mangu that it was possible that a clue might be found but that the tracing would be a matter of money. A few days later Bhagwant Singh provided Rs. 30, and at an interview at which many people were present, Mangu was given Rs. 4 and he was promised the balance of Rs. 26 on the return of the horses, and for the satisfaction of Mangu the Rs. 26 was, at his suggestion, placed in the hands of Chhajju Singh. Some 10 or 12 days after this Mangu returned and told Chhajju Singh that he wanted some more money, saying that he had to go a long distance and that more money would be spent. That request was refused, and on or about the 1st of December, 1926, Mangu told Chhajju Singh that he could not find the horses anywhere. Similarly Majid says that Mangu, when asked why he had not found the horses, said “this disease is beyond my power,” meaning that the tracing of them was beyond his power. The Government Advocate relies upon two extracts from the evidence—page 12, line 25 onwards and page 12, line 53 onwards. Page 12, line 25 and onwards, runs as follows—[Majid is giving evidence and he says as follows]—“This accused said ‘Either I shall take it to the cattle pound, or I shall bring it in here and leave it.’ ” The other statement is similar, and is made by Daku Singh :—“Mangu was saying ‘I will bring both the horses. Pay Rs. 4 at this time and deposit Rs. 26 with Chhajju Singh. I will admit them in the cattle pound or leave them near the village.’ ” Now the learned Government Advocate does not dissent from

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the possibility that all that has been read was or might well be taken to be prefaced by "If can get hold of the horses"; but he uses those phrases as an argument to show that Mangu's intention in taking them to the cattle pound or leaving them near the village was a desire or intention to screen the thief. The answer to that seems to be that there is no evidence that Mangu ever knew who was the offender. He may have done so, but there is nothing on the record to show that he knew who the thief was. There is nothing on the record to show that he did more than promise to attempt to trace out the horses, which we are willing to accept were stolen horses, and, if successful, to leave them in the pound or in the village—nothing beyond that. Those being the essential circumstances, the question is whether what Mangu agreed to do, and did, amounts to an offence under section 215 of the Indian Penal Code. The section runs as follows :—

"Whoever takes or agrees, or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years or with fine or with both."

Now that section has been the subject of two decisions in this Court, and it has also been considered by Mr. Mayne in the 4th edition of his work on Criminal Law in India, at page 271. In his commentary Mr. Mayne says :—

"The primary aim of the section is to punish all trafficking in crime, by which a person knowing that property has been obtained by crime, and knowing the criminal, makes a profit out of the crime, while screening the offender from justice."

Now we pause here for a minute to examine what Mr. Mayne puts forward as the essential ingredients. You must have a person knowing that property has been obtained by crime. In this particular case, as we are going to order the release of Mangu, we are willing to assume that the horses were in fact the subject of a theft on the night of October 1st, and that Mangu, having been informed of that, believed it to be the fact. We now come to this difficulty in the way of "the screening" and "knowing the criminal." There is, as we have said, not the least evidence that Mangu knew the criminal; and if we have to take the record, Mangu is entitled to ask us to give weight to the two places in the evidence where the prosecution agree that he said that he could not find the horses anywhere, and also that the finding of the horses was beyond his power. Therefore, if we take the evidence as it stands, Mangu was a man who had undertaken to endeavour to trace out and to restore the horses to their rightful owners if he was able to do so, and in the event of his being successful he was to be paid Rs. 30. But there is no suggestion in the bargain, at any stage of the proceedings, that he intended to screen the offender, and that, as will be seen, is the third essential spoken of by Mr. Mayne in his commentary. Mr. Mayne continues:—

"It is not an offence to take money from another in order to help him to find the property and to convict the thief. It is an offence for one who knew of the commission of the crime, and who could at once have informed upon the offender, to wait till a reward is offered, and then to take money from the owner of the property under colour of getting the property back for him. The section is not intended to apply to the actual thief, but to some one who, being in league with the thief, receives some gratification on account of helping the owner to recover stolen property, without at the same time using all the means in his power to cause the thief to be apprehended and convicted of his offence."

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Now, there again, "being in league with the chief" is a necessary act to be proved. The way in which the Government Advocate puts it is that the intention to leave the horses in the pound had its origin in the desire to screen the offender. It may of course bear that complexion but it equally supports this intention, namely; that Mangu, if he ascertained the whereabouts of these animals, was proposing himself to take them away from the unlawful possession in which they were and quietly and secretly restore them to the owners, Bhagwant Singh and Budhu, by leaving them in the pound or near the village and that in doing this Mangu was not anxious that the part he had taken in the matter should be known—and that he made these suggestions, that he should put them in the cattle pound or leave them in the village, for his own protection, so that it should not be known by the thieves that his had been the hand that had restored them to the owners. It may have been his intention to screen the original thief, but it may equally have been that he intended to save himself from the vengeance of the people from whom he intended to take away the horses if he discovered their whereabouts.

We are, therefore, of opinion that this prosecution was not started with the necessary facts which alone could support it, and that it fails because, strictly speaking, there is no evidence that the horses had been stolen, though for the purposes of this case we have been, in this particular instance, willing to accept that they were stolen, but there is certainly no evidence that Mangu knew the criminal, no evidence that he was making any attempt to screen that criminal from justice, or that he failed to use all means in his power to cause the offender to be apprehended. On those grounds we affirm the order whereby the Additional Sessions Judge acquitted Mangu, though, as we have said, we differ from him in

the reasons which he has given for such acquittal. Mangu is in Court and may leave the Court at once. The office will make the necessary arrangements to enable him to return to his village.

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Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Ashworth and Mr. Justice Iqbal Ahmad.

BALWANT SINGH AND OTHERS (OPPOSITE PARTIES) v.
PARTAP SINGH (APPLICANT).*

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June, 6.

Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 111 and 112—Appeal—Civil or Revenue Court—Question of proprietary title—Right of co-sharer to hold in severalty.

The right of a co-sharer to hold in severalty, if disputed, involves a question of a proprietary title, within the meaning of sections 111 and 112 of the United Provinces Land Revenue Act, 1901.

Tulsi Ram v. Gate Ram Rai (1), Muhammad Nazarullah Khan v. Muhammad Ishaq Khan (2), Ram Narain v. Jagan Nath Prasad (3) and Parsidhan Rai v. Dhaneshar Rai (4), referred to.

THE facts of this case sufficiently appear from the judgement of the Court.

Dr. M. L. Agarwala, for the appellants.

Munshi Vishun Nath, for the respondent.

ASHWORTH and IQBAL AHMAD, JJ. :—This second appeal arises out of an application for partition made by the respondent under section 107 of the U. P. Land Revenue Act (III of 1901).

*Second Appeal No. 1182 of 1925, from a decree of E. L. Norton, District Judge of Jhansi, dated the 17th of March, 1925, confirming a decree of Bakhtawar Singh, Assistant Collector, First Class, of Jalaun, dated the 6th of September, 1924.

(1) Weekly Notes, 1904, p. 225.

(2) (1910) I.L.R., 32 All., 523.

(3) (1915) I.L.R., 38 All., 115.

(4) (1925) 86 Indian Cases, 1033.