

APPELLATE CRIMINAL.

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

1930.
Novem
ber, 24.

EMPEROR v. SAT NARAIN.*

Criminal Procedure Code, section 412—Plea of guilty based on misconception of legal rights—Appeal not barred—Indian Penal Code, section 380—Theft—Hindu law—Stridhan—Wife absolute owner of gifts to her by husband or other relations.

Where an accused person pleads guilty on a charge under section 380 of the Indian Penal Code, but the said plea is founded upon an erroneous conception of one's right in the property, section 412 of the Criminal Procedure Code is inapplicable to the case and cannot shut out one's right of appeal.

Where articles of jewellery are given to a Hindu wife by her husband or her mother or other relations, they constitute her *saudayika stridhan* under the Hindu law, and she has absolute power of disposal over the same even without the consent of her husband; no charge of theft can, therefore, be based on any such disposal.

The Government Advocate (Mr. U. S. Bajpai), for the Crown.

Mr. P. N. Ghose, for the accused.

MEARS, C. J. and SEN, J. :—This is an appeal by the Local Government from an order passed by the learned Officiating Sessions Judge of Allahabad, dated the 30th of June, 1930, oversetting an order of a Magistrate of the first class who had convicted one Sat Narain under section 380 of the Indian Penal Code.

The prosecution in this case was initiated on a police report made by one Venayek on the 11th of March, 1930, in which he stated that certain gold and silver articles of jewellery and a silver *lota* of the total value of Rs. 283 had been stolen from inside a box in his house, the key of which used to be with his wife, Mst.

*Criminal Appeal No. 691 of 1930 by the Local Government, from an order of Rup Kishen Agha, Sessions Judge of Allahabad, dated the 30th of June, 1930.

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Ram Kali, and that he suspected that the respondent Sat Narain and one Girja Brahman of Rampur who used to come to his house had removed these articles in collusion with his wife. A detailed description of the alleged "stolen" property was given at the foot of the police report.

With the exception of a ring, a necklace and a mohar, the other articles alleged to be stolen were recovered from the possession of Jaggu, Tulshi, Ganga and Sheo Murat, with whom they had been pawned by Sat Narain; and four articles from Mst. Jasodri, with whom they had been pledged by Mst. Ram Kali between the months of *Bhadon* and *Pus*. There is evidence that Sat Narain had represented to Jaggu that the articles pawned with him were his property. There is also evidence that Sat Narain accompanied Mst. Ram Kali when she went to Mst. Jasodri to pawn the four articles mentioned above.

The police sent up both Sat Narain and Mst. Ram Kali for their trial under section 380 of the Indian Penal Code.

The houses of Venayek and Sat Narain are contiguous. Sat Narain and Venayek belong to the same caste of Mahabrahmans and are pattidars.

Venayek gave his age as forty years before the Magistrate. He has appeared before us and is undoubtedly much older. Ram Kali is admittedly a young woman of about twenty-five. The Magistrate describes the husband as old, infirm and valetudinarian, and the wife as a young, vigorous woman. Upon this hypothesis he builds up the theory that an illicit intimacy had sprung up between Sat Narain and Ram Kali and that the wife, anxious to retain and rivet the affection of a youthful lover, had readily parted with the property and spent it on him.

Ram Kali admits giving some of the property to Sat Narain, and the latter admits receiving some of the

property from her, but he pleads that he pawned them at her instance and for her benefit. There is no evidence on the record to disprove the statement except that of Jaggu, who states that Sat Narain represented that he was the owner of the articles sought to be pawned. It is clear that Jaggu's statement is self-exculpatory.

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There is no evidence on the record of any illicit intimacy between Sat Narain and Ram Kali. The question of Ram Kali's character or reputation was not in issue before the Magistrate and we express no opinion on it. But it is abundantly clear that Sat Narain and Ram Kali are friends and that such articles as Ram Kali handed over to Sat Narain were gifts or handed over for the purpose of pawning.

The learned Magistrate convicted both the accused on a two-fold ground:—(1) that the articles were the property of Venayek; (2) that both the accused had pleaded guilty. He directed that Ram Kali be released on her executing a bond for Rs. 100 with two sureties for like amount, to be of good behaviour for a year and to appear and receive sentence whenever called upon to do so. He sentenced Sat Narain to one day's simple imprisonment and a fine of Rs. 300. Sat Narain appealed. The learned Sessions Judge on appeal reversed the conviction and sentence. Ram Kali filed no appeal.

A preliminary objection was raised in the court below that Sat Narain, having pleaded guilty to the charge, had no right of appeal, and section 412 of the Code of Criminal Procedure was cited in support of this contention. This plea was repelled by the court below. The learned Government Advocate has put this forward as a substantive plea in his appeal to this Court. We are of opinion that this plea must fail. Where an accused person pleads guilty on a charge under section 380 of the Indian Penal Code but the said plea is founded, as here, upon an erroneous conception of one's right in the

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property, section 412 of the Criminal Procedure Code is inapplicable to the case and cannot shut one's right of appeal.

The court of first instance has not considered the case in its proper perspective and has failed to grasp the nature and character of the wife's interest in the property. Both in the police report and in his deposition in court, Venayek claims that the property belonged to him. These statements obviously proceed upon the common and popular conception of the husband's dominion over the wife's property. In the police report it is admitted that out of item No. 16, a pair of silver *dadni* and *dhar* was a present to the wife by her mother. The learned Magistrate thought that "all the articles were not the exclusive property of the husband. Some belonged to the husband, others belonged to the wife." He observed: "The articles are such which cannot be said to be the exclusive property of Mst. Ram Kali, for the list includes such articles as silver *lota* etc". The wife's version is that the articles belonged to the husband but were given to her by the husband (*pahnaya tha*) but that the husband continued to be the owner. Here again the wife commits the popular blunder as to the right of ownership in the *stridhan* property. The articles were given to her by the husband or by her mother and they constituted *saudayika stridhan* under the Hindu law. According to Mr. Mulla (Principles of Hindu law, 5th edition, page 139), "*Saudayika* is a term applied to gifts made to a woman at, before or after marriage by her parents and their relations, or by her husband and his relations; in other words, it means gifts from relations as distinguished from gifts from strangers . . . A woman has absolute power of disposal over her *saudayika stridhan*, even during coverture. She may dispose of it by sale, or by gift, or by will, or in any other way she pleases, even without the consent of her husband".

The following facts stand out in clear relief :—(1)

The property in controversy was the absolute property of Mst. Ram Kali being her *saudayika stridhan* under the Hindu law; (2) she was quite within her rights in pawning some of these articles to Mst. Jasodri; (3) it was within her competence to make a present of any of these articles to Sat Narain or any one else; (4) the husband was not competent to dispute the legality or validity of the transfers effected by Mst. Ram Kali or Sat Narain; (5) it therefore follows that the pawnees are entitled in law to be restored to the possession of the articles pledged and to retain them in possession until they are redeemed.

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Upon the findings set out above, we are of opinion that Sat Narain is not guilty under section 380 of the Indian Penal Code nor also was Mst. Ram Kali. The appeal by the Local Government therefore fails and is hereby dismissed.

As the result of our finding, the articles which were produced in the court below and some of which under our order, dated the 12th of November, 1930, have been produced by Venayek in this Court should be sent back to the Sub-Divisional Officer with the direction that they might be restored to the pawnees concerned. Venayek is also directed to produce before the Sub-Divisional Officer the items, 5, 11 and 14 which were made over to him by the court below and which have not been produced before us and which the pawnees have a right to hold until the money due to them is paid.