REVISIONAL CRIMINAL

Before Mr. Justice Allsop

EMPEROR *v.* YUSUF MIAN*

1938
April, 6

Indian Penal Code, section 215—*Ingredients of the offence—Whether theft or misappropriation must be positively proved—Cattle missing and subsequently found tied up to a tree in a jungle—Inference of theft or misappropriation—"Deprive" of movable property—Includes preventing the re-obtaining of possession—Whether knowledge of the accused as to who was the thief must be proved—Burden of proof—Evidence Act (I of* 1872), *section* 105.

A bullock was tied up during the night in the owner's house and was missing next morning. Three days later the accused, who promised to return the bullock for a sum of money and who were paid that sum, took the owner direct to a spot in the jungle and pointed out the bullock tied up to a tree. The accused were convicted under section 215 of the Indian Penal Code: *Held*, in revision.—

The word "deprive" in section 215 of the Indian Penal Code was not confined in its meaning to "take out of the possession" of the owner, but included the preventing of the owner from getting possession, and the tying up of the bullock in the jungle would therefore come within the scope of the section as it would prevent the bullock from going back to the owner's house, which it would normally do if it had only strayed and not been stolen. In the circumstances of the case it was not necessary to prove as a positive fact that the bullock had been stolen, and it was a fair inference from the facts, with which there was no reason to interfere in revision, that the owner was deprived of the bullock either by theft or by misappropriation committed by some person. The case was different from those in which the missing cattle was never recovered and in which it would not be a fair inference from the mere fact of the disappearance that the cattle had ever been stolen or misappropriated.

There is nothing in section 215 that requires, as an essential ingredient, knowledge on the part of the accused as to who was the thief or other offender who deprived the owner of the movable property. The clear meaning of the section is that it is

*Criminal Revision No. 191 of 1938, from an order of Atma Charan, Sessions Judge of Ghazipur, dated the 29th of January, 1938.

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an offence to receive money for helping any person to recover property stolen or misappropriated and that there is an exception only in favour of a man who can show that he used all means in his power to cause the apprehension of the offender. Section 105 of the Evidence Act also makes it clear that the burden of proving that the accused had used all means in their power to bring about the apprehension and conviction of the offender is upon the accused. The accused in the present case gave no explanation of how they discovered the bullock and there was nothing to show one way or the other that they knew or did not know who the offender was. They had not discharged the burden of proof which was on them and were rightly convicted.

Mr. *Shah Jamil Alam*, for the applicant.

Application heard *ex parte*.

ALLSOP, J.:—These are two connected applications in revision by three men who were convicted of offences under section 215 of the Indian Penal Code and sentenced each to rigorous imprisonment for a period of six months and a fine of Rs.25. According to the judgment of the lower appellate court there is evidence that a bullock was stolen from the house of one Sita Barai and that the applicants agreed to take a sum of money to return the bullock. There is also evidence that they did in fact take the complainant to the jungle where they pointed out the bullock tied to a tree. It is urged in these circumstances that the facts do not warrant a conviction under section 215 of the Indian Penal Code.

It is said in the first place that there is no proof that the bullock was stolen, because the evidence is only to the effect that the bullock was tied up during the night and was missing next morning. It is urged that the applicant should not have been convicted unless it was proved as a positive fact that the bullock had been stolen. The words of the section are: "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 the uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished . . ."

The question therefore before the courts below was whether the owner of the bullock had been deprived of it by an offence punishable under the Indian Penal Code. It is argued that these words mean that the bullock must have been stolen. Learned counsel suggests that "deprive" means "taken out of the possession of". I do not think that any such narrow interpretation can be placed upon that word. To deprive a person of any article may be either to take it away from him or to prevent him from getting possession of it if he would have done so in the normal course of events. In the circumstances of this case, even if the bullock did stray at night—although there is no reason for thinking that it did—yet the person who tied it up in the jungle was in my opinion depriving the owner of possession of it because normally a bullock which went away would return to its owner in the ordinary course and by being tied up it would be prevented from so doing.

Learned counsel has suggested that a person who commits criminal misappropriation does not deprive the real owner of possession of property. I cannot see that there is any force in this contention and there is no ruling which supports it. A reference has been made to the case of *Sharfa* v. *Crown* (1) decided by the Punjab High Court, to the case of *Bageshwari Ahir* v. *King-Emperor* (2) and the case of *Emperor* v. *Mangu* (3), in which learned Judges have remarked that it must be proved that the deprivation of possession was the result of an offence under the Indian Penal Code and that there can be no inference merely from the disappearance of cattle that any such offence was committed. These were all cases in which the stolen cattle were never recovered

(1) Punj. Rec. 1915 (Cr. J.) p. 19. (2) (1931) I.L.R. 11 Pat. 392.
(3) (1927) I.L.R. 50 All. 186.

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and very likely it was not a fair inference in any of these cases that the cattle had even been stolen or misappropriated. They had strayed and they were never found and there was therefore nothing whatsoever to suggest that any person had ever taken possession of them. The facts in the present case are entirely different. The bullock disappeared and was found three days later tied in the jungle where it was pointed out by the applicants.

It seems to me that the courts below were entitled quite fairly to make the inference that the bullock had either been stolen or misappropriated dishonestly by some person. In either case some offence was committed and that offence prevented the owner from retaining or obtaining possession of his property so that he was deprived of possession of it.

Reference has also been made to the case of *Emperor* v. *Ram Naresh Rai* (1). It was certainly said in that case, in which the facts were not dissimilar, that criminal misappropriation could not be presumed. I do not think, however, that in the present case there is any question of presumption. It is a question of inference from the facts, and what inference may properly be made is not a question of law but a question for the conscience of the person who is supposed to make the inference.

I think therefore that it cannot be said that the courts below were so utterly wrong in coming to the conclusion that the owner was deprived of possession of the bullock by means of an offence under the Indian Penal Code that this Court should interfere in revision. It appears from the judgment that the applicants themselves promised to return the stolen bullock. It was not a case where they merely said that they would make their best endeavour to discover where the bullock was, nor a case where they ultimately failed to discover the property. From the evidence it appears that as soon as they received their money they took the owner direct to the jungle and pointed out the bullock tied up to a tree.

(1) (1931) I.L.R. 54 All. 55

The second argument is that there is nothing in the record to show that the applicants had not used their best endeavours to cause the offenders to be apprehended and convicted of the offence. The applicants, I am informed, did not make any defence on this particular charge, in the sense that they gave no explanation of how they discovered the bullock and there was nothing to show one way or the other that they knew or did not know who the offender was. In this connection reference has again been made to *Mangu's* case (1). I should like to point out that much inconvenience and error is caused by attempts to regard the dicta of learned Judges as statements of law. In *Mangu's* case the learned Judges certainly made use of expressions from which it might be inferred that they were of opinion that nobody could be convicted of an offence under section 215 of the Indian Penal Code unless he knew who the offender was; but they were discussing the particular facts of that case and I do not suppose for a moment that they meant to lay down as a general rule of law that knowledge of the offender was a necessary ingredient of that offence. There is not one word in the section that suggests that such knowledge is necessary. It may well be that a person who receives money for discovering stolen property may in the course of his investigations obtain information which if followed up would lead to the apprehension of the offender. If he withholds that information from the proper authorities it is obvious that it cannot be said that he has used his best endeavour to cause the offender to be apprehended. The remarks of learned Judges should be read in connection with the circumstances which they are discussing and the principles of law which they intend to lay down can be inferred only from the effective decisions at which they arrive.

It has been held by two Judges of the High Court at Calcutta in the case of *Arman Ulla* v. *King-Emperor* (2)

(1) (1927) I L.R. 50 All. 186. (2) (1932) 37 C.W.N. 360.

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that the burden of proving under section 215 of the Indian Penal Code that the accused person used his best endeavours or the means in his power to cause the offender to be apprehended and convicted of the offence is upon him. This also seems to be the conclusion to be drawn from the provisions of the Indian Evidence Act. The clear meaning of the section in my judgment is that it is an offence to receive money for helping any person to recover property stolen or misappropriated and that there is an exception only in favour of a man who can show that he used all means in his power to cause the apprehension of the offender. Under the provisions of section 105 of the Indian Evidence Act, where a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any special exception or proviso contained in the Code or in any law defining the offence is upon him and the court shall presume the absence of such circumstances.

I therefore hold that the burden of proving that they had used all means in their power to bring about the apprehension of the offenders was upon the applicants in the present case and it is quite clear that they never made any attempt to discharge that burden. The application is rejected.

MISCELLANEOUS CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai

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April, 21

PAHLAD SINGH (PLAINTIFF) *v.* NIADAR SINGH AND ANOTHER (DEFENDANTS)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 33—Debtor's suit for account—Appeal for reduction of the amount adjudicated—Court fee on appeal—Ad valorem *on the amount sought to be reduced—Court Fees Act (VII of 1870), section 7(iv)(f); schedule I, article 1—Valuation of relief—Fictitious valuation.*

When in a suit for account under section 33 of the U. P. Agriculturists' Relief Act the court has adjudicated and declared

*Miscellaneous Case No. 432 of 1937.