1931

LACHMAN DEI, v. BEHARI LAL.

on the death of the widows the nearest relation of the husband succeeds to the share. Their Lordships of the Judicial Committee held that the only construction to which it is open was "that on the death of an owner of the village no daughter of his is under any circumstances entitled to a share in the property by right of inheritance whether he had left sons or not."

Hasan, C.J. and Srivastava, J.

For the above reasons disagreeing with the courts below, we are of opinion that the exclusion of daughters has been satisfactorily established. The plaintiff's suit must fail on this ground. It is therefore unnecessary for us to give a finding in respect of the other custom relating to the powers of widows.

The appeal fails and is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Bisheshwar Nath Srivastava.

1931

ebruary, 18

GAYA PRASAD, (ACCUSED-APPLICANT) *v.* KING-EMPEROR COMPLAINANT-OPPOSITE PARTY.)*

Indian Penal Code (Act XLV of 1860), section 411—Stolen property, dealing with—Receiving stolen property believing it to be stolen—The word "belief", meaning of—Circumstances giving rise to suspicion—Conviction, where justified on circumstantial evidence—Evidence Act (I of 1872), section 114 (b)—Accomplice—Statement of accomplice—corroboration—Conviction on uncorroborated statement of accomplice, if justified.

Held, that the word "belief" in section 411 of the Indian Penal Code is much stronger than the word "suspect" and involves the necessity of showing that the circumstances were such that a reasonable man must have been fully convinced in his mind that the property, with which he was dealing, was stolen property. It is not sufficient in such a case to show that the accused person was careless or that he had reason to

*Criminal Revision No. 144 of 1930, against the order of G. C. Badhwar, Sessions Judge of Fyzabad, dated the 24th of October, 1930, upholding the order of M. B. Ahmad, Joint Magistrate of Fyzabad, dated the 3rd of September, 1930.

suspect that the property was stolen or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired. There may be circumstances giving rise to some suspicion but if those circumstances do not necessarily lead to the inference that the accused must have believed that the articles in question were stolen property, the accused could not be convicted under section 411 of the Indian Penal Code. Circumstantial evidence in order to justify conviction must be such as would unmistakably lead to the inference of guilt and be reasonably insonsistent with any theory about the innocence of the accused. *Empress* v. *Rango Timaji* (1), and *Suraj Prasad* v. *King-Emperor* (2), relied on.

It is seldom safe to base a conviction upon the settlement of an accomplice unless there is independent evidence to corroborate it in material particulars.

Mr. *H. N. Misra* for Dr. *J. N. Misra*, for the applicant.

The Government Advocate (Mr. *H. K. Ghose*), for the Crown.

SRIVASTAVA, J. :—This is an application for revision against the order dated the 24th of October, 1930, of the Sessions Judge of Fyzabad upholding the order dated the 3rd of September, 1930, passed by a Magistrate 1st class of that district convicting the applicant under section 411 of the Indian Penal Code and sentencing him to a fine of Rs. 200 or in default of payment of the fine, to rigorous imprisonment for three months.

The case for the prosecution which has been accepted by both the lower courts is that some copper utensils belonging to one Mr. Ali Azhar were stolen by two persons, Abdul Hakim and Sabit Ali, one of whom namely, Abdul Hakim was a servant of Mr. Ali Azhar. Both these persons were convicted under section 454 of the Indian Penal Code. Subsequent to their conviction, Gaya Prasad was tried, and convicted of an offence under section 411 of the Indian Penal Code. This prosecution was due mainly to the statements made by Abdul Hakim and Sabit Ali in which they stated that they had sold the stolen utensils to the accused Gaya

(1) (1880) I.L.R., 6 Bom., 402. (2) (1929) 6 O.W.N., 208.

1931

GAYA PRASAD v. KING-EMPEROR.

Srivastava, J.

Prasad. When the Sub-Inspector of Police went to Gaya Prasad's shop and called upon him to produce the utensils which he had purchased from Abdul Hakim he produced five of them. He denied having received any other utensils from him. On a search being made of his house, three more utensils forming part of the stolen property were recovered.

The contention urged on behalf of the applicant is that there is no evidence to prove that Gaya Prasad received these utensils knowing or having reason to believe the same to be stolen property. It is not possible in such a case to expect any direct evidence of guilty knowledge on the part of accused. The courts below have relied upon certain circumstantial evidence as establishing that the accused must have had reason to believe that the utensils in question were stolen property. Besides these circumstances, reliance has also been placed on behalf of the prosecution on the direct evidence of Abdul Hakim and Sabit Ali.

In the first place it is clear that these persons Abdul Hakim and Sabit Ali were accomplices and it can seldom be safe to base a conviction upon the statement of accomplices unless there is independent evidence to corroborate it in material particulars. In the second place the evidence of Abdul Hakim and Sabit Ali even if accepted as literally true, does not establish any guilty knowledge on the part of Gaya Prasad. All that that evidence proves is that the articles in question had been sold to Gaya Prasad by Abdul Hakim and Sabit Ali. This is not denied. The learned Government Advocate admits that this is not a case in which it could be said that Gaya Prasad knew that the utensils in question were stolen property. But he maintains that there is sufficient legal evidence to prove that he had reason to believe that they were stolen property. As I have already pointed out, the evidence of Abdul Hakim and Sabit Ali does not prove that the accused Gaya Prasad had any reason to suspect, much less to believe, that they were stolen property.

Then there remains the circumstantial evidence. One circumstance on which stress has been laid is that three of the utensils, exhibits 6 to 8 were recovered as a result of search and were not produced by Gaya Prasad when he was called upon by the Sub-Inspector to produce the utensils which he had purchased from Abdul Hakim. This is sufficiently explained by the fact that the Sub-Inspector when he went to Gaya Prasad's shop was accompanied by Abdul Hakim alone and the utensils which Gaya Prasad was called upon to produce by the Sub-Inspector were utensils which he had purchased from Abdul Hakim. It is in evidence that exhibits 6 to 8 were purchased by Gaya Prasad not from Abdul Hakim but from Sabit Ali. When exhibit 6 to 8 were recovered as a result of the search Gaya Prasad told the Sub-Inspector that he had purchased them from another person and when Sabit Ali was produced he at once admitted that he had purchased them from Sabit Ali. It is not therefore possible to draw any inference of guilty knowledge on the part of Gaya Prasad from the fact that exhibits 6 to 8 were not produced by him with the other articles.

The next circumstance relied upon is that the utensils purchased by Gaya Prasad had been broken by him after the purchase in order to prevent identification. The only evidence to which my attention has been drawn on this point consists of the evidence of Mr. Ali Azhar and his son showing that the utensils were in sound condition when they were stolen. But there is absolutely no evidence to prove that they were in a sound condition and not broken at the time when they were sold to Gaya Prasad. On the contrary the statement of P. W. 4 Sheo Narain who went to the shop of the accused soon after the utensils had been purchased by Gaya Prasad shows that they were then in the same condition in which they were found when they were handed over to, or recovered by, the Sub-Inspector.

1931

GAYA PRASAD v. KING-EMPEROR.

Srivastava, J.

A point has also been made of the fact that the utensils in question were purchased at the rate of 8 annas 6 pies per seer whereas according to the evidence, the rate at which second hand copper utensils are usually sold in the market is 12 annas per seer. This rate of 12 annas per seer is the ordinary market rate for old copper articles in sound condition. If the articles at the time of purchase by Gaya Prasad were not in a sound condition, then in that case a rate of 8 annas 6 pies per seer would be quite a reasonable rate for old utensils in a damaged condition. It is not therefore possible to say that the accused purchased these utensils at an unreasonably low price.

Lastly it was pointed out that Sabit Ali and Abdul Hakim were two young men of 18 and 20 of no status and they could hardly be supposed to be owners of such articles. Assuming this to be so it might at best give rise to some suspicion but it cannot be said that it necessarily leads to the inference that the accused must have believed that the articles were stolen property. Circumstantial evidence in order to justify conviction must be such as would unmistakeably lead to the inference of guilt and reasonably be inconsistent with any theory about the innocence of the accused. Further as held in *Empress* v. *Rango Timaji* (1), which was followed by my learned brother RAZA, J. in *Suraj Prasad* v. *King Emperor* (2), "the word 'believe' in section 411 of the Indian Penal Code is much stronger than the word 'suspect' and involves the necessity of showing that the circumstances were such that a reasonable man must have been fully convinced in his mind that the property with which he was dealing, was stolen property. It is not sufficient in such a case that he had reason to suspect that the property was stolen or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired." The accused is a *thather* by profession who deals in the purchase and sale of copper and brass utensils. He purchased these articles in open

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1931

GAYA PRASAD v. KING-EMPEROR.

market in the ordinary course of his business at a price which was not at all unreasonable. The circumstances on which reliance has been placed on behalf of the prosecution are none of them such that the accused as a reasonable man must have felt convinced in his mind that the property which he was purchasing was stolen property. In my opinion therefore the prosecution has failed to bring home the guilt to the accused.

Srivastava, J.

I accordingly allow the application, set aside the conviction and sentence and direct that the fine if paid be refunded.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice B. S. Kisch.

1931

April, 8.

DAULAT SHAH (APPELLANT) *v.* THE DEPUTY COMMISSIONER OF BAHRAICH, MANAGER, COURT OF WARDS, PIPRI ESTATE (RESPONDENT).

Court of Wards Act (IV of 1912), *sections* 15, 17, 18 *and* 22—*Notification under section* 15 *calling upon persons having claims to notify them—Failure to produce original bond or its copy with the notice of claim—Subsequent production of bond without showing good cause for its previous non-production—Admissibility of document—Secondary evidence, when can be permitted to be produced—Claim of the debt independently of the bond—Failure to notify such claim, effect of.*

Where after the notification under section 15 of the Court of Wards Act (IV of 1912) calling upon all persons having claims against the ward or his property to notify them, the plaintiff sent two notices notifying his claim under a bond but he did not produce the original bond or a copy of it with the statement of his claim as required by section 17, clause (4) of that Act, *held*, that the case falls within the terms of section 22 of the Court of Wards Act and that the plaintiff having

*Second Civil Appeal No. 91 of 1930, against the decree of Babu Bhudar Chandra Ghosh, Subordinate Judge of Bahraich, dated the 31st of July, 1930, dismissing the plaintiff's claim.