REVISIONAL CRIMINAL.

Before Mullick and Scroope, JJ.

MUSAMMAT GULJANIA

v.

KING EMPEROR.*

1927.

March, 9.

Code of Criminal Procedure, 1898 (*Act V of* 1898, *section* 239(*f*)—*Receivers of stolen property, joint trial of*—*Penal Code*, 1860 (*Act XLV of* 1860), *section* 411.

Where several articles stolen at one theft are received by different persons, all or any of the receivers are triable jointly for the offence of receiving stolen property.

The facts of the case were as follows.

The petitioner Musammat Guljania and her sister Sarjania were maid-servants in the service of the Maharanis of Darbhanga till August 1925. In February 1926 Sarjania was living in her own house in Darbhanga while Guljania was living in a house belonging jointly to herself and Sarjania at Pahi Tola which is sixteen miles from Darbhanga. The third accused in the trial court was a man named Bouku Jha who lived in a village five miles from Darbhanga and was till a year before the theft, which formed the subject-matter of the present proceedings, in the service of one of the Maharaja of Darbhanga's relatives. In December 1925 the Maharaja and the Maharani Saheba went from Darbhanga on a visit to Calcutta. They returned on the 21st January. At the time of their departure for Calcutta there was in the palace at Darbhanga an almirah full of clothes, the key of which was entrusted to one Bhagwan Dutt Jha. Bhagwan Dutt went to his own home the same day the Maharaja left for Calcutta and returned four or five days after him. On the 5th February he

*Criminal Revision no. 76 of 1927, from a decision of J. A. Saunders, Esq., I.C.S., Sessions Judge of Muzaffarpur, dated the 10th January 1927, modifying a decision of Maulavi Muhammad Yusuf, Magistrate, 2nd Class, of Darbhanga, dated the 22nd September, 1926.

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tried to open the almirah and found that the lock had been tampered with. The almirah was then broken open and it was discovered that it was empty and the clothing the value of which was Rs. 4,000 had been removed. Some other articles belonging to the Maharaja had also been taken.

On or about the 16th February in consequence of information received, the houses of Sarjania, Guljania and Bouku Jha were searched. In the house of Sarjania at Darbhanga were found a lady's coloured silk reticule and a large wooden box with two brass handles; in the house occupied by Guljania at Pahi Tola was found a large tin trunk containing 37 articles of clothing; and in the house of Bouku were found a green chaddar and two highly ornamental silk caps and four new betel-nut crackers. It was alleged that all these articles were stolen from the palace of the Maharaja between the 2nd December 1925 and the 5th February 1926.

The petitioners were put on their trial jointly for an offence under section 411 of the Indian Penal Code and were convicted by the second class Deputy Magistrate of Darbhanga.

In appeal the Sessions Judge of Muzaffarpur, to whom the case was transferred after some proceedings in the High Court, acquitted Sarjania and Bouku, but he convicted Guljania of the offence charged and sentenced her to rigorous imprisonment for six months and a fine of Rs. 100.

S. Sinha (with him *S. V. Verma* and *H. P. Sinha*), for the petitioner.

Sultan Ahmad, Government Advocate (with him *S. Saran*), for the Crown.

MULLICK, J.—The first point urged before us to-day is that the joint trial of the three accused was bad in law and a very careful argument has been submitted to us by learned Counsel on behalf of the

petitioner on the meaning of clause (*f*) of section 239 of the Code of Criminal Procedure.

It is urged that this clause contemplates that receivers of stolen property cannot be tried jointly unless they received the goods from the thief by one act of transfer. It is urged that the words "in respect of stolen property the possession of which has been transferred by one offence" refer to the transfer of possession from the thief to the receivers and not to transfer of possession from the true owner to the thief. The section has not been very clearly drafted; but we think, on the whole, that it refers to transfer of possession from the true owner to the thief.

The following cases may arise when stolen property is found in the possession of different receivers. There may be one theft and the several receivers may have received the property jointly, i.e., at one and the same time; there may be one theft and the several receivers may have received the property at different times; there may be two or more thefts and the several receivers may have received the property jointly; there may be two or more thefts and the several receivers may have received the property at different times.

It was clearly unnecessary for the legislature to legislate for the joint trial of persons to whom property has been transferred jointly, that is to say, when one receiver receives the property as the agent of another. In such a case whether there is one or more than one theft, the receipt of the goods is the act of one person and a joint trial is clearly permissible. Nor is it conceivable that the legislature intended to enact that there should be a joint trial of receivers who have received at different times goods stolen at different thefts. There is no community of purpose between the receivers and there is no reason for providing for the joinder of parties in such a case.

But the case in which there is one theft and the property has passed to the several receivers at

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different times required legislation, because it had been held in several High Courts that a joint trial was illegal. It was thought a multiplicity of trials should be avoided and therefore clause (*f*) was inserted into the Code of 1923. The statute practically declares that the different acts of receipts are one and the same transaction if the transfer of possession from the owner to the thief was made by one and the same act. Whether the word " transfer " is appropriate to the change of possession in such a case may be open to argument but I think this is the only construction which can be reasonably given to the statute.

In this view of the case the joint trial of Musammat Sarjania, Guljania and Bouku was legal provided there was prima facie evidence to support the case that the articles were stolen in the course of one and the same theft. Now it has been urged by the learned Counsel that there is no express finding to this effect. The learned Sessions Judge expresses the opinion that although no direct evidence has been adduced on the point the probabilities are that the articles were stolen at one and the same time. At any rate there is nothing to indicate the contrary. The steel trunk and the wooden box and the other articles were all in the palace when the proprietor left it in December. The smaller articles could have been removed and were in fact found in the boxes, and we agree with the learned Judge that the removal was made in the course of a single theft. Upon the evidence the trial court was right in holding a joint trial.

The next point urged is that there is no clear evidence that the properties alleged to have been found in the possession of Guljania were in her exclusive possession. Now, it is true that in the trial court she claimed that some of the articles of clothing had been given to her by her mistress; but that defence does not cover the steel trunk and some of the other valuable articles found in the trunk.

Her defence with regard to them is that while she was living in the house at Pahi Tola some men in the service of the Maharaja of Darbhanga brought the trunk and the clothing contained therein to her house and saying that the Maharani had sent them, put the articles into the room ordinarily occupied by Sarjania. Evidence was given in the trial court that Sarjania was living at Darbhanga and that she only goes at intervals to her house at Pahi Tola and that during her absence the room in which the articles were found and which had only a thatch door was not used. The question whether the articles were in the joint possession of Sarjania and Guljania or in the separate possession of Guljania does not require discussion because Guljania's case is that she alone was in the house at the time when the trunk arrived and that the goods were forced upon her and that she had no idea that the articles which had not been given to her were in the box. No attempt has been made to show that the steel trunk was sent, as alleged, by the Maharani of Darbhanga and left in her house against her will or that she was in any way deceived into accepting the box and its contents. It is an unlikely story in itself and the finding of the court is that she was well aware that both the box and its contents were stolen property.

There can be no doubt that she dishonestly retained property knowing it to be stolen.

Finally, a point was taken that the petitioner was prejudiced in her trial, because she was not permitted to examine as witnesses the two Maharanis of Darbhanga. I is said that she desired to prove that some of the articles in the box had been given by the Maharanis to her as presents in the course of her service. That defence, however, would not cover the case of the steel trunk and some of the other articles of clothing, and her defence with regard to these articles could not have been in any way improved by the examination of the ladies. The learned Sessions Judge has taken the view that the application for the

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examination of the ladies was made for the purpose of vexation and delay. We think there is some reason for such a view. In any event so far as the material part of the charge is concerned, namely, the steel trunk and the valuable items of clothing, it has not been shown that there has been any prejudice by the omission to enforce the attendance of the Maharanis of Darbhanga.

The result, therefore, is that the conviction and sentence must be affirmed and the application dismissed.

SCROOPE, J.—I agree.

Rule discharged.

APPELLATE CIVIL.

Before Mullick and Scroope, JJ.

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March, 11

MAHARAJ BAHADUR SINGH.

v.

RAI BAHADUR P. C. LAL CHAUDHURY.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *Order XXI, rule* 54—*Execution of decree—Notice of sale, whether publication necessary in every mauza to be sold—Proceeding to set aside sale—question of valuation may be raised.*

Where a large number of mauzas are to be put up for sale in execution of a decree it is not necessary that notice of the sale should be published in every mauza.

Krishna Pershad Singh v. *Moti Chand* (1), distinguished.

In a proceeding to set aside an execution sale on the ground of irregularities in publishing and conducting it, the judgment-debtor is not precluded from raising the question of valuation merely because the question has already been decided when the sale proclamation was settled.

Mahadeo Singh v. *Dhobi Singh* (2), doubted.

*Appeal from Original Order no. 103 of 1926, from an order of Babu Harihar Charan, Subordinate Judge of Purnea, dated the 22nd April, 1926.

(1) (1913) I. L. R. 40 Cal. 635. (2) (1923) I. L. R. 2 Pat. 916.