

AJENDRA NATH

1963

April 23.

v.

STATE OF MADHYA PRADESH

(K. SUBBA RAO, RAGHUBAR DAYAL and
J. R. MUDHOLKAR JJ.)

Criminal Trial—Property recovered not proved to be stolen property—Acquittal by Sessions Judge—State appeal against few—Allowed against the appellant—Finding on the question reversed—High Court, if could record its own findings—Assistance in concealment of stolen property—Scope of—Indian Penal Code (Act 45 of 1860), ss. 120-B, 379, 414.

Five bales, containing woollen shawls and mufflers despatched from Kanpur by the British India Corporation Ltd. and another bale despatched from Haimanpur to Kanpur, were loaded in wagon at Itarsi railway station. The lock of the wagon was found broken open and on checking at Nagpur the aforesaid bales were found missing. On search, certain articles including some torn labels were recovered from the house of one Gopi Nath. The same day the appellant and few other persons were found by the Police, coming out of Gopi Nath's house whose front door was locked. They were taken to the Police Station and at the instance of the appellant, the police recovered woollen shawls, mufflers, bed sheets and certain house-breaking implements from different places of that house. After investigation, six persons including the appellant were put on trial before the Magistrate for several charges under ss. 120-B, 379 and 414 of the Indian Penal Code and except one Birendra Nath, all were convicted. On appeal, all the convicted persons were acquitted by the Additional Sessions Judge, on further appeal by the State, against the acquittal of Gopinath and the appellant, the High Court allowed the appeal only against the appellant with respect to the offence under s. 414 of the Indian Penal Code. On appeal by special leave, this Court held :

Held that the mere fact that the other accused persons were acquitted on the ground that the property recovered was not proved to be stolen property did not preclude the State from appealing against the acquittal of the appellant against

1963

Ajendra Nath
v.
State of Madhya Pradesh

whom there is better evidence. The State could challenge the correctness of the findings of the Additional Sessions Judge about the property being stolen property and the High Court could record its own findings on that question.

Held further, that it is not necessary for a person to be convicted under s. 414 Indian Penal Code that another person must be traced out and convicted of an offence of committing theft. The prosecution has simply to establish that the property recovered is stolen property and that the appellant provided help in its concealment and disposal. The circumstances of the recovery in the present case sufficiently prove that the appellant had assisted in the concealment of the stolen property and had thus committed the offence under s. 414 Indian Penal Code. The appeal therefore, must be dismissed.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 226 of 1960.

Appeal by special leave from the judgment and order dated July 28, 1960 of the Madhya Pradesh High Court in Criminal Appeal No. 385 of 1959.

A. R. Choubay and *Naunit Lal*, for the appellant.

I. N. Shroff, for the respondent.

1963. April 23. The Judgment of the Court was delivered by

Raghubar Dayal J.

RAGHUBAR DAYAL J.—This appeal, by special leave, is directed against the order of the High Court of Madhya Pradesh reversing, on State appeal, the order of the Additional Sessions Judge, Hoshangabad, acquitting the appellant, and convicting him of an offence under s. 414 I.P.C.

Five bales, containing woollen shawls and mufflers despatched from Kanpur by the British India Corporation Ltd., Kanpur Woollen Mills Branch, Kanpur, and another bale despatched from

1963

Ajendra Nath
v.
State of Madhya Pradesh

Raghubar Dayal J.

Haimanpur to Kanpur were loaded at Itarsi railway station on September 18, 1957, in Wagon No. C.R. 325. The lock of the wagon was found broken open at Pandhurna Railway Station at about 1.00 a.m. on September 20, 1957. On checking at Nagpur the aforesaid bales were found missing. One of the bales despatched from Kanpur was found lying the next morning near the railway line between railway stations Jaulkheda and Multai.

On September 23, 1957, the house of one Gopi Nath, at Multai, was searched and certain articles, including some torn labels were recovered from that house.

The same day, the police found the appellant and a few other persons come out of Gopi Nath's house at Betul, whose front door was locked. Subsequently, these persons were taken to the police station, where the appellant made a statement showing readiness to point out the stolen property. At his instance, the police recovered from different places of that house, woollen shawls, mufflers, bed-sheets and certain house-breaking implements. These recoveries were made on September 23 and 24.

As a result of investigation, six persons were put on trial in the Magistrate's Court. Ajendra Nath, appellant, was charged under ss. 120-B, 379 and 414, I.P.C. Babu Ram was charged under ss. 120-B and 379 I.P.C. Ram Prasad and Gyarsi were charged under s. 120-B read with s. 379 I.P.C., Gopinath under s. 120-B read with s. 414 I.P.C., and Birendranath under s. 414 I.P.C. The learned Magistrate acquitted Birendra Nath and convicted the other accused of the offence under s. 120-B read with s. 379 I.P.C., except in the case of Gopinath, who was convicted of the offence under s. 120-B read with s. 414 I.P.C. Ajendra Nath was also convicted of the offence under s. 414 I.P.C.

1963

Ajendra Nath
v.
*State of Madhya
Pradesh*
Raghub v Dayal J.

On appeal, the learned Additional Sessions Judge, Hoshangabad, acquitted all these convicted persons. He held that the property recovered was not proved to be stolen property and that the alleged conspiracy was not proved. The State filed an appeal against the acquittal of Gopinath and Ajendra Nath. The High Court dismissed the appeal against Gopinath and the appeal against Ajendra Nath for the offence of conspiracy. It however allowed the appeal against Ajendra Nath with respect to the offence under s. 414 I.P.C. It is against this order that this appeal has been filed by Ajendra Nath, appellant.

Ajendra Nath did not question the recovery of the various articles from Gopi Nath's house at Betul at his instance. He did not claim the property to be his own, but stated that it was not stolen property. The main contention for the appellant in this Court has been that these recovered articles were not proved to be stolen property. The articles consisted of those said to have been sent by the British India Corporation Ltd., Kanpur Woollen Mills Branch, Kanpur, and bed-sheets sent by the firm of V.S.N.C. Narsingha Chettiar, which carries on business of wholesale Hand Loom Cloth at Karur.

The invoices relating to the four bales sent by the Kanpur Woollen Mills give the details of the shawls and mufflers the bales contained. A very large quantity of these has been recovered. Out of 95 shawls and 63 mufflers, as many as 80 shawls and 43 mufflers had been recovered. Similarly, out of 10 pairs of bed-sheets stolen, 8 pairs have been recovered. The absence of any adequate explanation for the presence of such a large quantity of articles similar to those proved to have been despatched by the Kanpur Woollen Mills or by the Karur company, the recovery of these articles within

a few days of the theft, the presence of silk and paper labels of Kanpur Woollen Mills on most of the shawls and mufflers recovered and of certain manuscript writings on the labels of the bed sheets by P.W. 24 Krishnamurthi, brother of P.W. 16, Venkat Raman, who does the Karur business, have been taken into consideration by the High Court for coming to the finding that the property recovered was proved to be stolen property. These circumstances cannot be said to be such which would not justify the finding arrived at.

The main contention for the appellant however is that it has not been definitely established from the evidence of Kunzru, P. W. 10, that the shawls, mufflers recovered were manufactured by the Kanpur Woollen Mills and were despatched in the bales which were subsequently stolen. Kunzru's evidence does fall short of establishing that the shawls and mufflers recovered were manufactured by the Kanpur Woollen Mills. He has not identified the recovered shawls and mufflers as those manufactured by these mills. In fact, he was not even shown all the shawls and mufflers recovered. He was shown by the Police Inspector, Government Railway Police, two loins (two shawls) and two mufflers. He got them examined by the textile expert and, on the report of the expert, gave the certificate that they appeared to be manufactured by the Woollen Mills of Kanpur. That expert has not been examined in Court and therefore Kunzru's statement alone fails to establish that these shawls and mufflers were manufactured by these mills. However, it is not open to doubt that they were manufactured by these mills when most of them had sewn silk labels of these mills and quite a good number of them had even paper labels indicating that they were manufactured by these mills. There, is no reason to suppose and in fact no such suggestion has been made that these labels had been put on these articles by some one for the purpose of

1963

Ajendra Nath
v.
State of Madhya Pradesh
Roghubar Dayal J.

1963

Ajendra Nath
v.
State of Madhya
Pradesh

Raghubar Dayal J.

deception. We therefore consider that the finding that these shawls and mufflers were the manufacture of Kanpur Woollen Mills is correct.

It was also contended for the appellant that it was not proved that these shawls and mufflers were in the bales which were despatched by the Kanpur Woollen Mills and that the gate passes and the invoices produced by Kunzru were not proved as persons who wrote them had not been examined. Kunzru produced the originals of these documents. He is the salesman of the Kanpur Woollen Mills. His cross-examination in no way indicates that his statement about the genuineness of the invoices and gate passes was questioned in cross-examination. There is nothing to suppose that the invoices and gate passes produced in Court did not correctly represent the articles placed inside particular bales to which specific numbers were given and that those bales were despatched from the Mills in accordance with the gate passes. In this connection reference was made to the fact that five of the shawls recovered were of violet colour and no shawl of such a colour was mentioned in any of the invoices. There can be a possibility of a misdescription in the invoices. There can be a possibility of the violet shawls being the property stolen in some other incident. The fact remains that even the violet shawls are not claimed by the appellant as his own. So, we do not consider any force in this contention for considering the finding of the High Court defective about the property recovered to be stolen property.

With respect to the identity of the bed-sheets, there is the evidence of P.Ws. 16 and 24. P.W.16 deposed that he had supplied 10 pairs of bed-sheets to a certain customer who disowned the bale. Thereupon he asked the Station Master, Ahimanpur to return the parcel to Karur. He recognized the various sheets to be of his firm which they had

despatched to Ahimanpur. He further deposed that before despatching the goods they paste the firm labels on them. He stated that his younger brother Krishna Murti had noted size-number and pattern over these sheets in his hand-writing, as he happened to be at home on vacation. Krishna Murti, P.W.24, admits that certain labels on the bed-sheets were in his hand-writing, that he wrote them under instructions of his brother and that he had not written similar numbers on any other bed-sheets. He however stated subsequently that he did such type of markings casually, on occasions, and that the Sub-Inspector had also got him write the size, pattern etc., on certain other blank labels of the shop as well.

The learned Additional Sessions Judge did not rely on these statements and felt that the Investigating Officer might have got those markings on the labels of the recovered articles during the investigation. The High Court thought that there was no reason for doubting the correctness of the statements of these witnesses and for suspecting that the writings on the labels were obtained during the investigation. No question was put to P.W. 24 about the police making him write on the labels on the recovered articles. In fact, according to the witness, labels with his writings were shown to him for purposes of recognition and he recognized those writings to be his. The police took his writings on blank labels for purposes of comparison. We therefore see no good reason for considering the finding of the High Court with respect to the bed-sheets recovered to be stolen property to be wrong.

It was also contended that it was not open to the High Court to record a finding about the recovered property to be stolen property when the Government had not appealed against the other co-accused who were acquitted on the basis of the finding that the property recovered was not proved to be stolen

1963

Ajendra Nath
v.
State of Madhya Pradesh
Raghubar Dayal J.

1963

Ajendra Nath

v.

*State of Madhya
Pradesh**Raghubar Dayal J.*

property. We do not see any force in this contention. The mere fact that the learned Additional Sessions Judge acquitted the other accused on the ground that the property recovered was not proved to be stolen property did not preclude the State from appealing against the acquittal of the appellant against whom there is better evidence for establishing that he was in possession of the stolen property than the evidence was against the other co-accused. The State could challenge the correctness of the findings of the learned Additional Sessions Judge about the property being stolen property and, consequently, the High Court can record its own finding on that question.

Lastly, it was also urged that even if the identity of the articles recovered with the articles stolen be established, no offence under s.414 I.P.C. is made out against the appellant as the other accused have been acquitted and it is not known whom the appellant is supposed to have helped in concealing the stolen property. Section 414 I.P.C. makes it an offence for a person to assist voluntarily in stealing or disposing of or making away with property which he knows or has reason to believe to be stolen property. It is not necessary for a person to be convicted under s.414 I.P.C. that another person must be traced out and convicted of an offence of committing theft. The prosecution has simply to establish that the property recovered is stolen property and that the appellant provided help in its concealment and disposal. The circumstances of the recovery sufficiently make out that the property was deliberately divided into different packets and was separately kept. May be that the property falling to the share of a particular thief was kept separately. It was recovered from several different places in the same house. These places included an iron safe and an underground cellar. The evening before, several persons, including the appellant, were found to be coming out of the back door of the house which had its front door

locked. The appellant also knew the whereabouts of the property inside the house of his maternal grandfather. He attempted to sell a few mufflers a day before the recoveries were made. He was seen arriving at the house, during the night, in a car with some persons and then removing property which looked like bales from the car to the house. All these circumstances go to support the finding that he had assisted in the concealment of the stolen property and had thus committed the offence under s.414 I.P.C.

We therefore see no force in this appeal and, accordingly, dismiss it.

Appeal dismissed.

1963
 ———
Ajendra Nath
 v.
State of Madhya
Pradesh
 ———
Raghubar Dayal J.

STATE OF ANDHRA PRADESH

v.

CHEEMALAPATI GANESWARA RAO & ANR.

(K. SUBBA RAO, RAGHUBAR DAYAL and
 J. R. MUDHOLKAR JJ.)

1963
 ———
 April 23.

Criminal Trial—Joinder of charges and persons—Conspiracy, charge of—If illegal after conspiracy fructifies—Examination of accused—Right of accused to examine himself as witness—If duty of Court to inform accused of right—Pardon, legality of—Approver—Refreshing memory by reference to documents—If Permissible—Admissibility of evidence—Account Books—Absence of entries of payments alleged—Code of Criminal Procedure, 1898 (5 of 1898), ss. 233 to 339, 342, 337, 529, 537—Indian Evidence Act. 1872 (1 of 1872), ss. 5, 11, 34, 159, 170.

A and B were tried together at one trial, A of offences under ss. 120-B, 409, 477-A and 471 read with s. 476 Indian Penal Code and B of offences under ss. 120-B, 409 read with 109