

Emperor Vs. Balgobind and anr.

LegalCrystal Citation : legalcrystal.com/479344

Court : Allahabad

Decided On : Aug-29-1916

Reported in : AIR1916All102; 36Ind.Cas.157

Judge : Walsh, J.

Appellant : Emperor

Respondent : Balgobind and anr.

Judgement :

Walsh, J.

1. This case seems to me to raise about sixteen points of law of various kinds, but I do not propose to discuss them all at length. Out of respect to the Sessions Judge and to the Magistrate, I will just say—shortly a word or two upon the points referred to me. I think the Sessions Judge is right, namely, that unless the receiving is joint, persons cannot be tried jointly under Section 239 for receiving, merely because the goods were stolen in one theft. The acts of receiving in such a case by different persons on different occasions at different places are not only different offences but different transactions in themselves, and it is really not right to try A and B for receiving one set of goods at the same time as C and D for receiving wholly independently another set of goods. There is a danger of prejudice, even if it cannot be shown that the accused were actually prejudiced, and I do not think that the Magistrate's explanation really meets the point, because assuming that the brothers were living jointly together and that they were as jointly guilty as it is possible to be, that was no reason for trying them with the other three persons who had no connection with them of any kind. On the other hand, they did not appeal and I agree with Mr. Malcomson, that my jurisdiction is purely discretionary and that even if Section 537 does not apply, in the exercise of my discretion, I can hold that the point has been raised too late on behalf of these two men, and that there has been no failure of justice. It cannot be too clearly understood that objections to joint trials, or any other kind of procedure which is alleged to prejudice the accused, should be taken when the charge is made, before the Judge goes into the merits. It is an objection relating to the charge and ought to be made when the accused are charged. If it is wrongly refused, if the objection is wrongly overruled, the accused have an appeal; but if the Judge agrees with the objection, he can separate the parties and try them separately; and no Judge can be expected to take these objections from the Bench itself and unless they are taken at the trial, the Judge's mind is never directed to them. So that if I had not heard Mr. Saila Nath Mukerji this morning, I should have refused to interfere. The accused accepted the decision. They did not object to the procedure. They did not appeal. Mr. Malcomson is perfectly right, they have no claim in law to ask for revision, and under these circumstances, I think it would be wrong to quash

the conviction merely for the purpose of having them tried again, but Mr. Mukerji has drawn my attention to matters to which I am prepared to give effect. With regard to Balgobind, there is no evidence against him of any previous bad character, although he was possessed of one dhoti and a bag within five days of the theft. It is just possible that his brother, who has absconded, might have been the real receiver, and that he, Balgobind, merely received them as a gift, or wore the dhoti without troubling very much, as an honest man would have done, to enquire where it came from. It may be his first experiment in crime of this kind, and I think in his case is sufficiently met by three months' imprisonment which he has already undergone. The case of Shankar is quite different. He seems to have had some previous experience in crime. If the previous conviction of 1893 is the only one against him, not much need be said about it, but he was also convicted in 1914 and received 15 stripes; then it looks very much as though he were carrying on this as a regular business, and he ought to be very careful, because people who make it a practice of receiving stolen goods, ought to be severely dealt with; but it so happens in his case, although his character seems to be far from clean, that the case against him practically broke down. The most that the Magistrate found against him is that he was living in the house where these things were and must have known that they were stolen; but that finding does not amount to a finding of receiving at all, and if that was all there really was against him, he ought not to have been convicted. In addition to that the Magistrate appears to have informed himself of the previous convictions before arriving at his conclusion; so that there seem to be at least three fatal objections in law to Shankar's conviction if he had chosen to appeal. It seems a long way round but the result seems to be really that although he is not guilty, he has been convicted and has accepted the decision, and thereby, in my opinion, acknowledged his guilt, and although he had a right of appeal and would have succeeded if he had exercised it and has no right of revision as things now are, nonetheless in the exercise of my discretion I reduce his sentence also to the term already undergone. The result, therefore, is that the sentences of the appellants are reduced to the terms of imprisonment already undergone.

LegalCrystal - Indian Law Search Engine - www.legalcrystal.com