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15 B. 351.

the exact sum to be paid, there was a distinct breach of trust on the part of the complainant and Baladina. They promised not to let the steamer leave [368] Bombay till a certain sum was paid. The steamer sailed without one pie being paid. Baladina admits that he pressed the complainant to pay Rs. 5,000, and that the complainant collected the passage money and freight, and spent the same without one pie being paid to the accused. Under these circumstances, there can be no doubt as to the answer to the second question, noted at the commencement of this judgment. The accused was naturally irritated at the way in which he was being treated by the complainant; but if he went beyond the bounds of fair criticism, and used expressions which were not warranted by the facts, he must suffer the consequences. In a matter of this kind the accused is entitled to insist on the fair ordinary sense being attached to his expressions. Misappropriation is wrong appropriation. As long as no money was paid or offered by the complainant, who had collected the passage money and freight, though the steamer had left Bombay, so long was the accused justified in asserting that the money, which was to be paid as a condition precedent to the steamer leaving Bombay, had been wrongly appropriated. As long as the complainant paid no heed to the letters and messages from the accused, so long was the accused justified in asserting that the complainant was keeping out of the way. He did not mean that the complainant was absconding or evading service of legal process. He evidently meant, what was a fact, that the complainant was keeping out of his way.

For these reasons I am of opinion that the accused has been wrongly convicted.

Conviction and sentence reversed.

Attorneys for applicant:—Messrs. Craigie, Lynch and Owen.

15 B. 369.

[369] APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS v. BALYA SOMYA AND ANOTHER.*
[9th October, 1890.]

Indian Penal Code (Act XLV of 1860), s. 411—Retaining stolen property—Charge to the jury—Misdirection.

The accused were charged with retaining stolen property under s. 411 of the Indian Penal Code (Act XLV of 1860). The Sessions Judge in his charge to the jury merely directed them to find whether the property was stolen, and whether it was retained by the accused.

Held, that the charge was defective and amounted to a misdirection. The Sessions Judge should have directed the jury to find (1) whether the property was stolen, (2) whether it was dishonestly retained, and (3) whether the accused knew or had reason to believe the same to be stolen property. Unless these questions were found by the jury in the affirmative the accused could not legally be convicted of an offence under s. 411 of the Indian Penal Code.

[F., 25 C. 711 (713); R., 10 Bom.L.R. 565=8 Cr.L.J. 36.]

* Criminal Appeals, Nos. 311 and 319 of 1890.

APPEALS from the convictions and sentences recorded by C. E. G. Crawford, Sessions Judge of Thana, in the case of *Queen-Empress v. Balya Somya and Bendya Hiprya*.

The accused were charged with dishonestly retaining stolen property under s. 411 of the Indian Penal Code.

The Sessions Judge in his charge to the jury made the following observations:—

“You have to decide whether the property before the Court was stolen, and whether it was retained by the accused.

“The witnesses Govinda and the head constable speak to the theft and to the finding of the property in the possession of Bendya (No. 1), and of the persons with whom both the accused placed it. They are corroborated by Dharma and Malu, two of these persons, the third being unable to come here on account of extreme old age. Govinda is also corroborated in identifying the property as his by his cousin Narayan.

“It is for you to say whether you believe these witnesses whom accused have not attempted to cross-examine or contradict, or the story of the accused which they have not attempted to prove.”

[370] The jury found both the accused guilty of the offence charged.

The Sessions Judge, agreeing with the verdict of the jury, convicted the accused under s. 411 of the Indian Penal Code and sentenced Bendya to transportation for seven years and Balya to rigorous imprisonment for three years.

Against these convictions and sentences the accused appealed to the High Court.

There was no appearance for the accused or for the Crown.

JUDGMENT.

PER CURIAM.—The Sessions Judge has misdirected the jury by telling them that it was only necessary for them to decide whether the property was stolen, and whether it was retained by the accused. He should have summed up all the evidence in the case, and directed the jury that before they could find the accused guilty of an offence under s. 411 of the Indian Penal Code it was necessary for them to find in the affirmative (1) that the property was stolen, (2) that it was dishonestly retained and (3) that the accused knew or had reason to believe the same to be stolen property. We reverse the conviction and sentence, and direct the accused to be retried.

Conviction and sentence reversed.

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