

SUVVARI SANYASI APPARAO AND ANR.

v.

BODDEPALLI LAKSHMINARAYANA AND ANR.

(S. K. DAS, J. L. KAPUR AND M. Hidayatullah, JJ).

Theft—Removal of property in the bonafide exercise of right—If good defence—Indian Penal Code, 1860 (XIV of 1860), s. 380.

On a complaint by one L, the Magistrate convicted the two appellants of an offence under s. 380 of the Indian Penal Code for having removed a printing press alleged to have belonged to L to whom it was sold in 1955 by one R once a declared keeper of the said press under s. 4 of the Press Act, 1867. The defence was that the Press originally belonged to one G. In 1947 G transferred it to N by Ex. D-2 wherein R joined formally, as declaration of keeper stood in his name. N sold the Press to the second appellant and another, but R's name continued as a printer and keeper of the press. In 1956 the second appellant leased out the press to the first appellant. According to the appellants, the second appellant was the owner in law and fact of the press and the first appellant was the lessee and had removed the press in the *bonafide* exercise of his right as lessee. The case of the prosecution hinged upon the evidence of R and that of the appellants rested upon the proof of the signature of R on Ex. D-2 which R denied. The handwriting expert stated categorically that Ex. D-2 bore the signature of R.

The Judge of the High Court who heard the appeal against the acquittal order, passed by the Additional District and Sessions Judge, said nothing about Ex. D-2 and considered the declaration of R under s. of the Press Act which continued unchanged, as sufficient to prove an offence of theft. According to him, the removal of the Press amounted to theft even though the appellants removed it under a *bonafide* claim of right.

Held, that where a *bonafide* claim of right exists, it can be a good defence to a prosecution for theft. An act does not amount to theft, unless there be not only no legal right but no appearance or colour of a legal right.

For the purpose of criminal law on the present case the evidence *prima facie* pointed to a transfer of the press by R and G to N. The evidence *prima facie* also established that the appellants had taken possession of the press under a

bonafide claim of right and there was some doubt about the right of R to transfer the press to L and further the defence that the appellants took possession of the press under *bonafide* claim of right was a good defence entitling them to an acquittal.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 31 of 1961.

Appeal by special leave from the judgment and order dated October 7, 1958 of the Andhra Pradesh High Court in Criminal Appeal No. 456 of 1957.

P. Ram Reddy, for the appellants.

Ratna Rao and *K. R. Choudhri*, for respondent No. 1.

A. Ganganatham Chetty and *T. M. Sen*, for respondent No. 2.

1961. October 5. The Judgment of the Court was delivered by

HIDAYATULLAH, J.— The two appellants, who were granted special leave by this Court, appeal against the judgment of the High Court of Andhra Pradesh convicting them, on appeal against acquittal, of an offence under s. 380 of the Indian Penal Code and sentencing them to six months' rigorous imprisonment and a fine of Rs. 500/- each, with further rigorous imprisonment for one month in default of payment of fine.

Hidayatullah J.

The prosecution case which had a chequered career in the High Court and the two Courts below, is as follows : In Dusi, which is a part of Bhas-kararaopuram, there was a Press known as Srinivasa Printing Press at Srinivasa Ashram. This Press existed for over 17 years. Pappala Chinna Ramadasu (P.W.4) was admittedly a printer and for some years, the declared keeper of that Press under s. 4 of the Press and Registration of Books Act, 1867. The declarations were made in 1944 (Ex.P.4) and 1947 (Ex.P-5). On November 21, 1955,

1961

*Suvvari Sanyasi
Apparao
v.
Boddepalli
Lakshminarayana*

1961

*Suvvari Sanyasi
Apparao
v.
Boddepalli
Lakshminarayana
Hidayatullah J.*

Pappala Chinna Ramadasu sold this press by a registered document (Ex.P.1) to one Boddepalli Lakshminarayana for Rs. 4,000/-, of which Rs.3,500/- were shown to have been paid in advance and the balance was received by Pappala Chinna Ramadasu on January 10, 1956, (Ex.P.2). Two applications were then made on December 1, 1955, respectively by Chinna Ramadasu and Boddepalli Lakshminarayana before the Collector and District Magistrate, for substituting the name of Boddepalli Lakshminarayana in place of that of Pappala Chinna Ramadasu in the declaration. On December 6, 1955, by Ex. P.11 they were informed that they should apply under the Press and Registration of Books Act (25 of 1867). Subsequently, on January 11, 1956, a declaration under s. 4 of that Act was made by Boddepalli Lakshminarayana and was accepted (Ex.P.3).

The case of the prosecution further is that Boddepalli Lakshminarayana went to Kurnool on March 20, 1956, and in his absence, the two appellants with two others (who were prosecuted but acquitted) removed the Printing Press on the night of March 25, 1956 to Korlakota where the first appellant, Apparao, resides. A report of the offence (Ex.P.13), purporting to be written on March 27, 1956, was handed in at the police station house on the following day at 8 P.M. The police took no action, and a complaint was, therefore, filed on April 4, 1956, by Boddepalli Lakshminarayana. The Judicial Second Class Magistrate, Srikakulam, convicted the two appellants of an offence under s. 380 of the Indian Penal Code, and acquitted the two others, with whom we are not concerned, and sentenced each of the appellants to simple imprisonment till the rising of the Court and a fine of Rs.250/-, with simple imprisonment for one month in default. On appeal, the Additional District and Sessions Judge, Srikakulam, set aside the conviction and acquitted them. The complainant then obtained special leave of the High Court to file an

appeal against this acquittal, and the High Court reversed the acquittal, as already indicated above.

In support of the prosecution case, the complainant examined four witnesses, including himself. Pappala Chinna Ramadasu was examined as P.W.4 to prove that he had sold the Press to Boddepalli Lakshminarayana, and two other witnesses were examined to prove the removal of the Printing Press by the appellants.

The defence of the appellants was as follows : According to them, the Press originally belonged to one Govindachari, and on October 25, 1947 he transferred it to Kuna Appala Naidu by Ex. D-2. In the registered sale deed then executed, Govindachari was joined formally by Pappala Chinna Ramadasu. The sale was for Rs. 6,400/- and on the same day, a promissory note was executed by Kuna Appala Naidu in favour of Govindachari, which was attested by Pappala Chinna Ramadasu. Subsequently, Appala Naidu made payments of certain amounts, and endorsements on the promissory note showing these payments were signed by Pappala Chinna Ramadasu as a witness. Kuna Appala Naidu was examined as D.W.1, and he stated that the name of Pappala Chinna Ramadasu was formally included in the transfer deed, since the declaration stood in his name. He also stated that the deed, Ex. D-2, was signed as witness by one Akkala Naidu, who died years before the present controversy started. Kuna Appala Naidu later sold the Press to the second appellant and one Sri K. Sri-ramdas, and the second appellant continued in possession as owner. Pappala Chinna Ramadasu continued as the printer, and his declaration as the keeper of the Press also continued. In 1953, Pappala Chinna Ramadasu left the Press for good. The Press was leased out by the second appellant to one C. Appanna, and this lease continued till 1956. On March 19, 1956, an agreement for lease was executed in favour of the first appellant, and on March 26, 1956, a registered deed was duly

1961

Suvvari Sanyasi
Apparao

v.
Boddepalli
Lakshminarayana

Hidayatullah J.

1961

Suvvari Sanyasi
Apparao
v.
Boddepalli
Lakshminarayana
Hidayatullah J.

executed. According to the appellants, the Press was removed during the day on March 27 and the lease amount was paid on the 28th. According to them, the second appellant was the owner, in law and in fact, of the Press and the first appellant was the lessee and had removed the Press in the *bona fide* exercise of his right as lessee. The appellants examined eight witnesses in support of thier case.

The case of the prosecution hinged upon the evidence of Pappala Chinna Ramadasu, when confronted with Ex. D-2, he denied his signature, and stated evasively that he could not identify the signatures of Govindachari and Appala Naidu. He admitted, however, that Appanna used to look after the Press after 1953, though he said that he used to visit the Press once in two or three months before he sold it to P.W.1, and that the correspondence used to be made in his name. He also stated that he had purchased the Press from the Madras Type Foundry Co., for Rs. 9,107/- but that the bills were lost, and he added that they were taken away along with the Press, when it was removed. The case of the appellants rested upon the proof of the signature of Pappala Chinna Ramadasu on Ex. D-2 and additionally, the proof of the signature of Akkala Naidu, because if Akkala Naidu signed the document in 1947 and died some four years before the present controversy started, there would be good reason to think that a document of this character could not be a fabricated one. The appellants examined a handwriting expert, Sri B. R. Singh (D.W.8). He stated categorically that Ex.D-2 bore the signature of Pappala Chinna Ramadasu. The signature of Akkala Naidu was proved by his son, Sri Rangam. He identified the signature of his father not only on that document but also on Ex. D-3, the promissory note. He also stated that his father had died in 1951.

From this material, the Additional District and Sessions Judge, Srikakulam, found that Ex- D-2

was not a forged document, as was suggested, but was amply proved as genuine by Pappala Chandrudu (D.W.4) and the combined evidence of Sri Rangam (D. W. 3) and Sri B. R. Singh (D. W. 8). He therefore, held that Pappala Chinna Ramadasu had no right to sell the Press in 1955 to Boddepalli Lakshminarayana and that his connection with the Press had effectively ceased from 1953 even as a mere printer. It is unnecessary to examine whether this finding or the finding given by the Judicial Second Class Magistrate, Srikakulam, who held otherwise, was the correct inference from the facts. The learned Judge of the High Court, who heard the appeal against the acquittal, said nothing about Ex. D-2. According to him, the removal of the Press amounted to theft, even though the appellants removed it under a *bona fide* claim of right.

In this statement of the law, the learned Judge was, with respect, clearly in error. This is what the learned Judge observed :

“Further, to a charge of theft, the plea that the property was removed under a *bona fide* claim of right would not avail. For example a person who *bona fide* believes that the fountain pen on his neighbour's desk is his has no right in law to trespass into the neighbour's house and snatch away the pen without the latter's consent.”

The first of the statements is certainly not the law. It is settled law that where a *bona fide* claim of right exists, it can be a good defence to a prosecution for theft. An act does not amount to theft, unless there be not only no legal right but no appearance or colour of a legal right. In 2 East P.C. p. 659, the law was stated a long time ago thus :

“If there be in the prisoner any fair pretence of property of right, or if it be brought into doubt at all, the court will direct an acquittal.”

1961

Suvvari Sanyasi
ApparaoBoddepalli
Lakshminarayana

Hidayatullah J.

1961

Suvvari Sanyasi
Apparao
v.
Boddepalli
Lakshminarayana
Hidayatullah J.

And according to I Hale P.C. 509, the best evidence is that the goods were taken quite openly. The law thus stated by East and Hale has not been altered in modern times. There are numerous cases in which Courts in India have recognised a *bona fide* claim of right as a defence to the charge of theft. See Ratanlal law of Crimes 19th Ed. p. 933.

We are not concerned in this case with the declaration under the Press and Registration of Books Act. A declared keeper of the Press is not necessarily the owner thereof so as to be able to confer title to the Press upon another. The ownership of the Press is a matter of the general law and must follow that law. Whether Pappala Chinna Ramadasu was not only the declared keeper of the Press but also its owner can only be effectively decided by the Civil Court. For purposes of Criminal law, the evidence *prima facie* pointed to a transfer of the Press by Pappala Chinna Ramadasu and Govindachari to Kuna Appala Naidu. The evidence *prima facie* also established that the appellants had taken possession of the Press under a *bona fide* claim of right, and that, in our opinion, was sufficient to dispose of the present case. The Additional District and Sessions Judge, Srikakulam, had rightly held that the matter was for the decision of the Civil Court, and that this was not a case of theft under the Indian Penal Code, and had rightly directed the acquittal of the appellants. The learned Judge of the High Court considered the declaration by Pappala Chinna Ramadasu, which continued unchanged, as sufficient to prove an offence of theft. In our opinion, in the circumstances and in the light of the finding given by the District and Sessions Judge with regard to Ex. D-2, it was necessary to go further to see what right Pappala Chinna Ramadasu had to the Press at all. If this had been considered, the learned Judge would have seen that there was some doubt the right of Pappala Chinna Ramadasu

to transfer the Press in 1955 to Boddepalli Lakshminarayana, and further that the defence that the appellants took possession of the Press under a *bona fide* claim of right was a good defence entitling them to an acquittal.

In the result, this appeal must succeed. The convictions of the appellants and the sentences passed on them are set aside, they are acquitted and their bail bonds shall stand discharged. The fines, if realised, are ordered to be remitted.

Appeal allowed.

1961

Stavari Sanyasi
Apparao

v.
Boddepalli
Lakshminarayana

Hidayatullah J.

THE STATE OF BOMBAY (NOW GUJARAT)

v.

NARANDAS MANGILAL AGARWAL AND ANOTHER

(K. N. WANCHOO, K. C. DAS GUPTA and
J. C. SHAH, JJ.)

1961

October 6.

Prohibition—Medicinal preparation with excess of alcohol—Intoxicating effect—Offence under the Prohibition Act—Burden of proof—Board of Experts under the Act—Consultation with, if and when obligatory—Payment of excise duty to and licence to export granted by Bhopal State—Validity of conviction under Bombay prohibition laws—Bombay Prohibition Act, 1949 (Bom. 25 of 1949), as amended by Bombay Act 26 of 1952, ss. 6A, 11, 12, 13, and 24A.

The respondents were charged with offences punishable under ss. 65(a) and 66(1)(b) of the Bombay Prohibition Act, 1949, for violating the provisions of ss. 12 and 13 of the Act. The prosecution case was that the respondents brought in their motor truck into the State of Bombay from the adjoining State of Bhopal, bottles labelled *Mrugmadasav*, and that the bottles did not contain genuine *Mrugmadasav*, an Ayurvedic preparation, but only intoxicating liquor, import transportation and possession whereof without permit or licence under the Act were prohibited. The Magistrate found that the bottles contained 75.50% alcohol—much in excess of the normal percentage of alcohol used in preparing *Mrugmadasav*, according to the standard Ayurvedic formula—