

APPELLATE CRIMINAL

Before Ranjit Singh Sarkaria and S. C. Mital, JJ.

THE STATE,—Appellant.

versus

NIHAL SINGH AND ANOTHER,—Respondents.

Criminal Appeal No. 635 of 1967

August 31, 1970.

Penal Code (XLV of 1860)—Section 380—Railway waiting room—Whether a “building, used as a human dwelling”—Theft committed in such room—Whether punishable under section 380.

Held, that term ‘dwelling’ in section 380, Indian Penal Code, means a building, tent or vessel, in which a person lives, remains or lingers whether permanently or temporarily. A Railway waiting room, therefore, is a ‘building used as a human dwelling’ and a theft committed therein would be punishable under section 380, Indian Penal Code.

(Para 7)

Appeal from the order of Shri Salig Ram Bakshi, Chief Judicial Magistrate, Jind, dated the 10th April, 1967, acquitting the respondents.

D. D. JAIN, ADVOCATE, for ADVOCATE-GENERAL, (HARYANA), for the appellant.

U. D. GOUR, ADVOCATE, for the respondent.

JUDGMENT

The judgment of this Court was delivered by R. S. Sarkaria, J.—On December 14, 1966, at about 11.30 p.m. the luggage of Raj Mohan Soni (P.W. 4) was stolen from the second class waiting room at Jind Railway Station. According to the prosecution, the luggage was recovered shortly after the occurrence from Nihal Singh and Ram Chand accused-respondents. After investigation, in due course, the Police set up the accused persons for trial before the Chief Judicial Magistrate, Jind. On January 25, 1967, the Magistrate framed two separate charges against the accused persons in respect of an offence under section 380, Indian Penal Code, and proceeded with the trial. Thereafter, he recorded the entire prosecution evidence produced by the prosecution on February 1, 1967 and February 2, 1967, and then examined the accused persons on February 14, 1967. The case was then adjourned to March 6, 1967, for production of the defence evidence. No such evidence was, however, produced and the case was

ultimately fixed for final arguments. At that stage, on the application dated 16th March, 1967 of the accused-persons, the Magistrate by the impugned order, dated April 10, 1967, amended and altered the charge to one under section 379, Indian Penal Code. Thereafter, on the same date, Raj Mohan Soni applied for permission to compound the offence. By the second impugned order, the learned Magistrate granted the permission and acquitted the accused persons on the basis of the composition. Against those orders culminating in acquittal of the accused persons, the State has preferred the present appeal.

(2) It may be noted that under the Code of Criminal Procedure, Schedule II, while an offence under section 379, Indian Penal Code, is compoundable (when the value of the property does not exceed Rs. 250) an offence under section 380, Indian Penal Code, is not compoundable at all. Thus, the controversy in this appeal mainly pivots around the question, whether the matters before the trial Court disclosed an offence under section 380 or one under section 379, Indian Penal Code.

(3) The testimony of Bhagwan Dass, P.W. 1, is that Raj Mohan Soni entered the second class waiting room at Jind Railway Station with his attache-case, Exhibit P. 1, and hold all, Exhibit P. 2. He left this luggage in the room and went away, telling P. W. Bhagwan Dass, bearer, that he was going to take his meals, and that in his absence, he should take care of his luggage left in the room. Likewise, the evidence of Raj Mohan Soni is that he had left his luggage in the waiting room under the care of P.W. Bhagwan Dass, while the former had temporarily gone away for taking his meals. It was further in evidence that the accused persons detained at Jind at 11.30 p.m. and entered the waiting room. They sent away Bhagwan Dass to fetch tea for them. When Bhagwan Dass returned with the tea, he found that the accused and the luggage of Raj Mohan Soni had disappeared. Bhagwan Dass reported the matter to Mohinder Singh Constable, who shortly after that, arrested both the accused persons together with the luggage, from a Tonga.

(4) Keeping in view the gist of the evidence produced above, the question would further resolve itself into the issue: whether a Railway waiting room is a building used as a "human dwelling" within the contemplation of section 380, Indian Penal Code.

(5) Section 380, Indian Penal Code, is in these terms :—

“Whoever commits theft in the building, tent or vessel which building, tent or vessel is used as a human dwelling or used for the custody of property shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.”

(6) There can be no dispute that a railway waiting room is a ‘building’. The further point for consideration is, whether it is used as a ‘human dwelling’. The contention of Mr. Gaur, is, that the word ‘dwelling’ in section 380, Indian Penal Code, has a restricted meaning, viz., “a house or building used as a *permanent residence*”, and that it does not include such public places where passengers may only rest for a while, awaiting the arrival of their train.

(7) It is true that one facet of the dictionary meaning of ‘dwell’ is ‘to remain as in a permanent residence’, ‘to have one’s abode, to reside’. But that is not the only connotation of the term, which is of wide amplitude and is used in several shades and senses. The O.E., i.e., the original appearance of the word in English (vide, Shorter Oxford Dictionary (Third Edition, and Webster’s New International Dictionary, Second Edition), was ‘dwellan’ or ‘dwellian’—akin to “dull”—which originally meant “to linger, delay, tarry”. In current use also, it retains the meaning : “to abide, remain or linger for a time in a place or condition”. Thus construed, the term ‘dwelling’ in section 380, Indian Penal Code, means a building, tent or vessel, in which a person lives, remains or lingers whether permanently or temporarily. A Railway waiting-room, therefore, is a ‘building used as a human dwelling’ and a theft committed therein would be punishable under section 380, Indian Penal Code. This being the case, the learned Magistrate was in error in altering the charge from one under section 380 to that under section 379, Indian Penal Code, and his further order in allowing composition of this manifestly non-compoundable case—which was one under section 380, Indian Penal Code—and acquitting the accused on the basis thereof, was vitiated and without jurisdiction.

(8) In the result, we accept the appeal, set aside the impugned orders, and remand the case to the Chief Judicial Magistrate, Jind, for retrial in accordance with law.

K. S. K.