Present : Akbar J.

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KING *v.* THOMAS APPU.

47—D. C. (Crim.) Colombo, 9,041.

Receiving stolen property—Reasonable explanation by accused—Guilty knowledge—Burden of proof—Penal Code, s. 394.

Where, in a charge of receiving stolen property, the Court draws a presumption of guilty knowledge and the accused gives an explanation, which appears to be reasonable, the prosecution, if it is to succeed, is bound to prove from other facts, whether in conjunction with the accused's explanation or not, either that the accused had guilty knowledge or that the explanation is false.

APPEAL from a conviction by the District Judge of Colombo. The facts appear from the judgment.

L. A. Rajapakse, for accused, appellant.

J. W. R. Ilangakoon, C.C., for respondent.

July 9, 1929. AKBAR J.—

This appeal is from a conviction on a charge of receiving stolen property, namely, a magneto and a battery, knowing them to be stolen property, and a sentence of 9 months' rigorous imprisonment passed on the accused.

The magneto and battery belonged to one Mr. Pestonjee, and he stated that the battery was numbered 72505 and the magneto F. U. 4. These numbers were given to the Police at the time of the theft, which occured on September 13 to 14 last, and the stolen articles were valued at Rs. 400 by Mr. Pestonjee. Mr. Pestonjee had a motor car cleaner named Albert in his employment who was paid weekly. It appears that this man Albert desired to be a monthly paid servant, and a week before this incident he was told that he had to leave as there was a permanent man. The battery and magneto were fixed in a lorry. Immediately after the discovery of the theft Albert did not come to work and he was arrested. As a result of a statement by him the house of the accused—who is the occupant of two rooms known as the Avasire Stores used for the supply of motor oil and the repairs of tubes and tyres—was searched and the magneto was discovered under a bed in the second room and the battery was found afterwards fixed to a motor bus belonging to one Basnaike who has given evidence. The discovery of the magneto was made on September 21.

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Albert, who was charged separately for theft, has given evidence in this case. He admits that he removed the battery and the magneto belonging to his employer Pestonjee at the instigation of the accused, who promised to give him Rs. 15 and asked him to go away to his village. The accused's story is that he had known Albert for over a year as the owner-driver of a motor bus, that Albert was in the habit of buying things from him, and that he bought the battery and the magneto from Albert for Rs. 100. The accused has produced no receipt to support his story. The battery which was found fixed to Basnaike's bus bears the No. 250. The other two numbers have been obliterated according to the report of the Government Analyst. Basnaike, who has given evidence, says that he hired this battery leaving his old battery to be repaired and re-charged by the accused. The accused wanted Rs. 75 as the price of this battery, but Basnaike said that he would try it first and then buy it. He further says that he paid Rs. 25 for the repairing and charging of the battery and for the hire of the new battery. Basnaike admitted that he had got other batteries re-charged for Rs. 3, and that Bousteads charged Re. 1 a day for the hire of a battery, and that it will cost from Rs. 20 to Rs. 25 to repair a cell. The fixing of the stolen battery to Basnaike's bus took place at 8 p.m. at night, and it should be noted that he gave his old battery to the accused to be repaired, not by him but by some firm which did this kind of work. The accused's Counsel contends that the accused had no guilty intention, and all the authorities usually cited in a case of this sort, including Lord Reading's dictum in *R.v. Abramovitch*[1] were cited at the argument, and also the case of *Perera v. Karunaratne*.[2] I think that it will be as well for me to restate the propositions of law which are based on these cases, especially in view of a recent decision of mine in a P. C. Colombo case decided last month. When an accused is charged with committing an offence under section 394 of the Penal Code, the burden of proving that the accused dishonestly received the stolen property, knowing or having reason to believe that it was stolen property, is of course always on the prosecution. This guilty knowledge must be proved beyond all reasonable doubt. But under the Evidence Ordinance (see section 114, illustration (*a*)) if the accused is in possession of the stolen property "soon after" the theft the Court may presume that he is either the thief or received the goods knowing them to be stolen unless he can account for his possession. It will be seen from the case of *Attorney-General v. Rawther*[3] that the Full Bench laid down the interpretation of the law on the subject as follows. The first question the Court has to decide is whether it may draw the presumption in the circumstances.

[1] *(1915) 84 L. J. K. B. 398.*

[2] *29 C. L. R. 49.*

[3] *25 N. L. R. 385.*

It is significant that the word used in the illustration is " may " and not " must. " The word " may " was used advisedly, because the drawing of the inference must depend on all the circumstances of the case, particularly the nature of the article stolen, whether it is one which passed readily from hand to hand or not. When the Court decides to presume the guilty knowledge the burden is cast on the accused to account for his possession. If the accused gives an explanation which appears to be reasonable, although the Court may suspect that it is not true, in such an event the accused is entitled to an acquittal unless the prosecution can prove beyond any reasonable doubt from other facts whether in conjunction with the accused's explanation or not that either the accused had the guilty knowledge or that the explanation of the accused is false. (See *R. v. Norris*[1] and the remarks of Bertram C.J. at page 392 in *Attorney-General v. Rawther* (*supra*).) So that an accused may be convicted in spite of his explanation if the Court is of opinion that his explanation is not a reasonable one in the circumstances, or even when it is *prima facie* reasonable if the prosecution proves other circumstances which, whether in conjunction with the accused's explanation or not, prove beyond any reasonable doubt that the accused had the guilty knowledge., In the Police Court case referred to above by me, the Police Magistrate came to the conclusion that the accused's explanation was not a reasonable one because an ordinary prudent reasonable man in the cuircumstances of that case would have suspected that the property was stolen. I pointed out that according to the decisions in the Indian Courts the test was not the one adopted by the Police Magistrate, but that the Court should consider whether the accused felt convinced in his own mind that the property was stolen, and I came to the conclusion from the fact that the accused had used the stolen bicycle openly for many months in the same condition in which he received the bicycle that he was not so convinced. If we apply this test in this case, I think the judgment of the District Judge was right, though not for the reasons given by him. What I have to decide first is whether a Court is entitled to draw the presumption in section 114 of the Evidence Ordinance. Considering the nature of the articles stolen and the interval between the theft and the possession, I have no hesitation in holding that such a presumption can be drawn. The next question is whether the explanation given by the accused is a reasonable one. Assume that it is ; this does not conclude the case, because the prosecution has called Albert and Basnaike and proved other facts. Albert seems to be a common cleaner and was never the owner of a bus. I cannot believe that the accused, who keeps a small store consisting of two rooms, one of which is used for sleeping purposes, obviously for

[1] (*1917*) *L. J. K. B. 810.*

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the repair and vulcanizing of motor tyres and for the supply of motor oil, could have paid such a large sum as Rs. 100 for a magneto and a battery to a person of the standing of Albert simply because he thought he was a bus owner. He had no reason to conclude that Albert was a bus owner for the simple reason that he could never have seen Albert's mythical bus. The evidence further shows that the numbers on the battery have been obliterated. It is true that the accused says that he did not know who did it, whether by Albert or by Basnaike. But the fact remains that the stolen property was found in the possession of the accused a week after the theft, and that he got rid of the battery to Basnaike within a few days after the theft, namely, September 18. Basnaike's evidence is very unsatisfactory, and points to the conclusion that he bought this battery, for which the price asked according to Basnaike was Rs. 75, for Rs. 25 and the old battery. Albert's evidence, if it is accepted, is conclusive against the accused, but as he is an accomplice his evidence cannot be accepted in its full significance ; but I think, reading the evidence as a whole that the explanation of the accused as to how he came to possess this stolen property cannot be true, and that the prosecution has proved beyond any reasonable doubt that the accused had reason to believe that it was stolen. In the result I affirm the conviction and dismiss the appeal.

Appeal dismissed.