1945 *Present:* **Cannon J.**

FERNANDO *et al.*, Appellants *and* HEILER (S. I. POLICE), Respondent.

655—656—M. C. Negombo, 44,037.

Penal Code—Dishonest receipt of stolen property—Accused's explanation which might reasonably be true—Burden of proof—Penal Code, s. 394.

In a prosecution for the offence of dishonest receipt of stolen property under section 394 of the Penal Code, the burden of proof of guilty knowledge remains with the prosecution to the end of the case—it is finally for the prosecution to satisfy the court that the explanation given by the accused is one that cannot reasonably be true, having regard to all the circumstances of the case.

APPEAL from a conviction by the Magistrate of Negombo.

H. V. Perera, K.C. (with him *H. W. Jayewardene*). for the accused, appellants.

E. L. W. de Zoysa, C.C., for the Attorney-General.

July 20, 1945. CANNON J.—

The appellants were charged with dishonestly retaining stolen property, to wit, two sarees, one frock, one jacket, one night-dress and a sheet valued at Rs. 173 on February 2, 1945, knowing or having reason to believe them to be stolen property in contravention of section 394 of the Penal Code.

The evidence for the prosecution was that these articles, together with a number of others to the total value of some Rs. 1,400 were stolen from a dwelling house on January 21, and were found in a dwelling house occupied by the two appellants in the same town on February 2. Such evidence being that the goods were stolen, that they were in the possession of the appellants and that they had been recently stolen raised a presumption of guilty knowledge, in the absence of an acceptable explanation.

The defence was that the appellants lived together as husband and wife and had been doing so for several years in comfortable financial circumstances, the husband being a charcoal contractor. On December 29 while the husband was away on a distant estate on business the wife bought the goods in question from a hawker for Rs. 73. Both the accused gave evidence and the husband said he was in fact away from home from January 20 to 31. The Superintendent of the estate in question confirmed that the husband was at the estate during that period and that on December 22 he bought a large amount of coconut shells which he subsequently converted into charcoal. The Magistrate rejected the explanation of the accused and fined the husband Rs. 100 or 6 months' rigorous imprisonment and further sentenced him to 2 years' imprisonment and 2 years' police supervision. The wife was fined Rs. 100.

In his judgment the Magistrate gives some reasons for rejecting the explanation of the accused. *Inter alia* he says that the wife was not prepared to give any information regarding the hawker or his whereabouts and that she had not stated what amounts she paid for each of the articles. What the wife is recorded as saying about the hawker is this—"I know him well. I have seen him going along the road often. I too have sold my old clothes to him. I do not know his name." It appears to be therefore not a case of her being unwilling to give further information; what she says in effect is that she is unable to give further information. As to what she paid for each item she was never asked to give this information. In disbelieving the husband the Magistrate makes a point of a receipt dated January 22 being produced from the estate, the receipt being for money paid by him for the coconut shells. The Magistrate says that this suggests that he left the estate on January 22 inasmuch as the husband said that he was not usually given a receipt for payment until the conclusion of his transactions when he left the estate. But the receipt says that the payment was made for coconut shell on the 22nd and it would be dated for the day when the payment was made. The accused says he remained after that till the 31st to convert the coconut shells into charcoal. The fact that the receipt was dated the 22nd does not justify a conclusive inference that the husband left the estate on that day. The Magistrate further says, "I am not satisfied that the accused went to Badalgama estate on January 20 and returned as stated by him." This would appear to be a misdirection in law which I will deal in a moment.

Mr. Perera for the appellants submits that the Magistrate has misdirected himself on the facts and on the law as regards the *onus* of proving

guilty knowledge. It is well established that in receiving cases if evidence is given that the goods are stolen and that they are in the possession of the accused then, having regard to the proximity of the date of the theft and the nature of the articles, a presumption may arise that the accused knew that the goods were stolen when they got possession of them, unless some acceptable explanation be given. An acceptable explanation is one that may reasonably be true. This does not mean reasonably true *per se* but reasonably true having regard to all the circumstances of the case. The circumstances of this case do not appear to be inconsistent with the reasonableness of the story. The law as regards burden of proof of guilty knowledge in receiving cases is concisely stated in the headnote in *Rex v. Abramavitch* [1] at page 396 as follows:—

> " If an explanation were given which the jury thought might reasonably be true, although they were not convinced of its truth, the prisoner was entitled to be acquitted inasmuch as the Crown would have failed to discharge the duty cast upon it to satisfy the jury beyond reasonable doubt of the guilt of the accused."

The burden of proof of guilty knowledge remains with the prosecution to the end of the case—it is finally for the prosecution to satisfy the Court that the explanation given is one that cannot reasonably be true, having regard to all the circumstances of the case. It seems to me that the Magistrate has not quite appreciated this. For example he says, " the indications are that these articles were received into the house by both accused with the knowledge that they were questionable articles ". This may be so, but that would suggest only a case of suspicion which this case undoubtedly is. But the Magistrate's judgment shows that in addition to forming certain misconceptions about the evidence of the appellants he did not correctly apply the principle governing the proof of guilty knowledge. For these reasons the appeal must be allowed and the conviction quashed.

Conviction quashed.

1 *(1914) 84 L. J., K.B.D. at p. 396.*