In the present case the question is whether the security deposit received for the purpose of ensuring the return of empty bottles is assessable income under section 10 of the Act. In my opinion the judgment of the House of Lords in 1948 I.T.R. p. 92 governs the case.

The Punjab Distilling Industries, Ltd., Khasa, Amritsar
v.
The Commissioner of Income-tax, Punjab, Pepsu, etc.

Harnam Singh, J.

For the foregoing reasons, I am not satisfied with the correctness of the decision of the Tribunal so far as question No. 1 is concerned. That being so, I would require the Tribunal to state the case in the several matters and refer for decision to this Court question No. 1 set out above.

Costs to be costs in the cause.

KHOSLA, J.—I agree.

Khosla, J.

APPELLATE CRIMINAL

Before Falshaw and Kapur, JJ.

THE STATE,—*Appellant*

versus

JITA RAM,—*Respondent.*

1952

June, 20th

Criminal Appeal No. 496 of 1950

Indian Penal Code (Act XLV of 1860) –Section 411—Explanation given by the accused, found to be reasonable—Whether entitles the accused to acquittal—Indian Evidence Act (I of 1872) Section 114 Illustration (a)—Presumption under.

A bicycle was stolen on 3rd November 1949. It was sold by the accused on 25th February, 1950. He was arrested and put on trial for an offence under section 411, Indain Penal Code. The accused admitted that he had sold the bicycle but pleaded that it had been given to him by his father. The father appeared as a witness and stated that he had purchased it from a co-villager for Rs. 150 eight months prior to the sale and had asked his son to sell it as he wanted money. The learned Magistrate found that there was no evidence to show that accused had committed the theft and as there was a gap of about three months and twenty-two days between the theft of the bicycle and the sale of it by the accused and as there was an explanation given by the father of the accused which the Magistrate

found to be reasonable, he refused to draw the inference that the accused had received stolen property knowing it to be stolen and therefore acquitted him. The State filed an appeal against acquittal.

Held, that—

(i) under illustration (a) to section 114 of the Indian Evidence Act, the Court may, but is not obliged to, make the presumption therein mentioned.

(ii) even if the Court makes the presumption under illustration (a) to section 114, the onus on the general issue is still on the prosecution.

(iii) the accused is entitled to acquittal, if he can give an explanation which may reasonably be true, although the jury may not be convinced that it is true.

R. v. *Schama* (*1*), *Hathem Mondal* v. *King Emperor* (*2*), *Satya Charan Manna* v. *Emperor* (*3*), *Kabatulla* v. *Emperor* (*4*), *Bhutnath Mandol* v. *King Emperor* (*5*), *Woolmington* v. *The Director of Public Prosecution* (*6*), *and Fateh Mohammad* v. *Emperor* (*7*), relied upon.

State Appeal against the acquittal order of Shri G. R. Vij, Magistrate, 1st Class, Hoshiarpur, dated the 17th August 1950, acquitting the respondent.

HAR PARSHAD, Assistant Advocate-General, for Appellant.

S. V. KESAR, for Respondent.

JUDGMENT

Kapur, J. KAPUR, J. This appeal is brought by the State against an order of acquittal of Jita Ram who was prosecuted for an offence under section 411 of the Indian Penal Code for receiving a stolen bicycle.

On the 3rd November 1949, Ranjit Singh, P.W. 7, a student of the D.A.V. School, Hoshiarpur, took his bicycle to the school and kept it

(1) 84 L.J. (K.B.) 396
(2) 24 C.W.N. 619
(3) I.L.R. 52 Cal. 223
(4) I.L.R. 53 Cal. 157
(5) 35 C.W.N. 291
(6) 1935 A.C. 462
(7) A.I.R. 1948 Lah. 80

unlocked at the cycle-stand and when the school closed he found the bicycle missing. The matter was reported to the Headmaster and after a futile search a report was lodged with the Police by Dhanna Singh, the father of Ranjit Singh. Before the 25th February 1950 the accused Jita Ram took a bicycle to a bicycle repair shop belonging to Faqir Chand P. W. 2. It was repaired and handed over to the accused. On the 25th February 1950 Jita Ram again took the bicycle to the shop of Faqir Chand for the purpose of selling it which after some haggling was sold for Rs 135. Jita Ram took the money and gave the receipt Exh. P.C. On the 12th March Faqir Chand sold the bicycle to Dhanpat Rai for Rs 180.

It appears that Jita Ram was arrested and he told a Head Constable Ashwani Kumar that he had sold the bicycle to Faqir Chand and pointed out the shop to him. Faqir Chand produced the receipt and then the bicycle was recovered from the house of Dhanpat Rai.

Jita Ram admitted that he had sold the bicycle but he pleaded that it had been given to him by his father who has appeared as a witness and has stated that he purchased the bicycle for Rs 150 some eight months previously from a person in his village and that he had asked his son to sell it as he wanted money. The father also stated that if he had known that the bicycle was stolen he would never have purchased it.

The learned Magistrate found that there was no evidence to show that Jita Ram had committed the theft and as there was a gap of about three months and twenty-two days between the theft of the bicycle and the sale by Jita Ram and as there was an explanation given by the father which the Magistrate found to be reasonable, he refused to draw the inference that the accused had received stolen property knowing it to be stolen and therefore acquitted him.

The law as to presumption under section 114 of the Indian Evidence Act has been discussed at

The State
v.
Jita Ram

Kapur, J.

some length by a Division Bench of the Calcutta High Court in *Keshab Deo Bhagat* v. *Emperor* (1), and in the head-note the law is put as follows:—

> "(i) Under ill (a) to section 114 of the Indian Evidence Act, the Court may, but is not obliged to, make the presumption therein mentioned.
>
> (ii) Even if the Court makes the presumption under ill. (a) to section 114, the onus on the general issue is still on the prosecution.
>
> (iii) The accused is entitled to acquittal, if "he can give an explanation which may reasonably be true, although the jury may not be convinced that it is true."

Reliance in this case was placed on a judgment of the Court of Criminal Appeal in *R.* v. *Schama* (2), where Lord Reading C. J. observed—

> "In a case, such as the present, where a charge is made against a person of receiving stolen goods well knowing the same to have been stolen, when the prosecution have proved that the person charged was in possession of the goods, and that they had been recently stolen, the jury should then be told that they may, not that must, in the absence of any explanation which may reasonably be true, convict the prisoner. But if an explanation has been given by the accused, then it is for the jury to say whether upon the whole of the evidence they are satisfied that the prisoner is guilty. If the jury think that the explanation given may reasonably be true, although they are not convinced that it is true, "the prisoner is entitled to be acquitted, inasmuch as

(1) I.L.R. (1944) 1 Cal. 595.
(2) 84 L.J. (K.B.) 396.

> the Crown would then have failed to discharge the burden imposed on it by our law of satisfying the jury beyond reasonable doubt of the guilt of the prisoner."

This rule was followed in *Hathem Mondal* v. *King-Emperor* (1), by Sanderson, C.J., Walmsley J. concurring. Newbould and Mukerji JJ., in *Satya Charan Manna* v. *Emperor* (2), referring to *R.* v. *Schama* said—

> "That the law in India is similar to the law in England in this case is clear from the words used in illustration (a) to section 114, "may be presumed", and from the definition of these words given in section 4 of the Evidence Act."

In Kabatulla v. *Emperor* (3), Suhrawardy and Panton JJ. said—

> "It is not necessary that such claim (explanation offered) by the accused must be proved. There may be a case in which it is impossible for the person who is in possession of the property to prove how he obtained possession of it, and if he states the circumstances under which he obtained it the jury, as a Court of fact, may accept it, and in that case it will be their duty to acquit the accused."

In another case *Bhutnath Mandol* v. *King-Emperor* (4), the rule was stated by S. K. Ghose J. in a case under section 411 of the Indian Penal Code in the following words—

> "Further, the presumption is only this, that if a man is in possession of stolen

(1) 24 C.W.N. 619.

(2) I.L.R. 52 Cal. 223.

(3) I.L.R. 53 Cal. 157.

(4) 35 C.W.N. 291.

The State
v.
Jita Ram

Kapur, J.

goods soon after a theft the Court may presume that he is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. This does not mean that the accused must prove affirmatively that he came by the goods innocently. It is sufficient if he can give an explanation which may raise doubt in the mind of the Court as to the guilt of the accused."

Lort-Williams J. expressed himself in the following words—

"In case of goods which have been recently stolen the law exempts the Crown from proving the guilt of the accused unless he gives some explanation as to how he came by the goods. If he gives any explanation which in the opinion of the jury may possibly be true, although they do not necessarily believe it, then the Crown cannot rely upon the presumption and must prove the guilt of the accused just as in any other criminal case."

In *Woolmington* v. *The Director of Public Prosecution* (1), which was a case where death had occurred as a result of a shot which was fired by the accused the law is stated in the head-note in the following words:—

"If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted the act was unintentional or provoked the prisoner is entitled to be acquitted."

At p. 481 Viscount Sankey L.C., observed—

"If, at the end of and on the whole of the case, there is a reasonable doubt, created

(1) 1935 A.C. 482.

by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal."

In *Fateh Mohammad* v. *Emperor* (1), Bhandari J. was also of the same opinion. Relying on the rule laid down in these cases my opinion is that in this particular case an explanation was given by the accused which has been accepted to be reasonably true and even if it was not convincingly true, the accused was therefore entitled to acquittal. I would, therefore, dismiss this appeal and uphold the order of acquittal.

FALSHAW J.—I agree. Falshaw, J.

REVISIONAL CIVIL

Before Khosla and Harnam Singh, JJ.

1952

July, 15th

SHRI NANAK CHAND,—*Defendant-Petitioner*

versus

SHRIMATI TARA DEVI,—*Plaintiff-Respondent.*

Civil Revision No. 479 of 5191

Delhi and Ajmer-Merwara Rent Control Act (XIX of 1947), section 9 (I) (d)—'Family'—meaning of—Joint Hindu family—Presumption.

Held, that in cluase (d) of section 9 (I) of the Act XIX of 1947 the Legislature used the word 'family' not in any special sense but in a loose and general sense. In this country specially a joint Hindu family is a normal feature and even if members of a joint Hindu family live in different places because of their being employed in offices or carrying on other avocations the tie is strong enough to include them within the term 'family'. Given a joint Hindu family the presumption is, until the contrary is proved, that the family continues joint. The presumption of union is the greatest in the case of father and sons. The presumption is stronger in the case of brothers

(1) A.I.R. 1948 Lah. 80.