

**Baiju Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/462696](http://sooperkanoon.com/462696)

**Court :** Allahabad

**Decided On :** Dec-05-1912

**Reported in :** 18Ind.Cas.684

**Judge :** Tudball, J.

**Appellant :** Baiju

**Respondent :** Emperor

**Judgement :**

**Tudball, J.**

1. The applicant, Baiju, was tried for an offence under Section 511/75 of the Indian Penal Code, jointly with two other persons, Puran and Durjan, who had been charged under Section 457 of the Indian, Penal Code. The facts are briefly as follows:

2. The house of Musammat Tulsha was broken into and property stolen during the night. In the morning, a report was made at the Police Station. On the same morning, Puran and Durjan were arrested at the Railway Station with property in their possession merely on suspicion. On information given by Puran, the Police proceeded to Baiju's house. He denied knowledge of Puran or the property. In the possession of these two men at the Railway Station was found property, which turned out to be part of the property stolen from Tulsha's house. Baiju's house was

searched and in it was found some more of Tulsha's property. A. third portion was found at a place pointed out by Puran. Puran stated that he had obtained the property from Tulsha's daughter, with whom he had an intrigue. Baiju's defence was that he had received the property in pawn in good faith from Puran. He called two witnesses to establish this but that evidence was disbelieved by both the Courts below. Upon these facts, Puran and Durjan were convicted of burglary and Baiju of receiving stolen property, As a matter of fact, there is no evidence worthy of belief that Puran pawned the property to Baiju. It is urged on behalf of Baiju that his trial jointly with the two other accused is illegal, as he was charged with receiving stolen property. It is next urged that the sentence is severe. If this case was one of those in which it is clearly established that the receiving of the property is a totally separate transaction from the burglary, in which the property was stolen, the trial of Baiju jointly with the other two accused would have been illegal and would have necessitated a fresh trial. But the facts proved clearly show that the burglary was committed in the night and in the next morning the property was found partly in possession of Baiju and partly in possession of Puran and Durjan. The story told by Baiju as to the manner in which he came into possession of the property has been disbelieved by both the Courts below and the evidence of his witnesses has been rejected. It was clearly open to the lower Court to presume under Section 114 of the Evidence Act that Baiju was one of the men who committed the burglary and I see no reason why that presumption should not be drawn. In my opinion, Baiju ought to have been convicted of the substantive offence under Section 457/75 of the Indian Penal Cod. I, therefore, alter the conviction to one under that section As regards the sentence in view of the fact that Baiju has been previously convicted, the sentence is not severe and I see no reason to interfere. With this modification, I reject the application.