

**State Vs. Magha**

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**Court :** Rajasthan

**Decided On :** Aug-29-1951

**Reported in :** AIR1952Raj97

**Judge :** Wanchoo, C.J. and; Bapna, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164; [Evidence Act, 1872](#) - Sections 114

**Appeal No. :** Criminal Appeal No. 64 of 1951

**Appellant :** State

**Respondent :** Magha

**Advocate for Pet/Ap. :** Sumer Dan, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

Wanchoo, C.J.

1. This is an appeal by the State against the acquittal of one Magha of an offence under Section 411 of the Indian Penal Code. We have heard the Assistant Government Advocate at length, and are of opinion that the appeal should be dismissed.

2. The prosecution story was briefly this. Sagar Mal, who was a co-accused with Magha, is the son of one Deep Chand. It is said that this Sagar Mal stole some ornaments, which were kept in a certain place in the house, while his father was away. After stealing these ornaments, he took them to Magha, who keeps a shop for groceries, and also works as a 'Sunar'. He is said to have given these ornaments to Magha, and took Rs. 3/- from him in return. When Deepchand returned home, his other children informed him that Sagar Mal appeared to be in funds. So he tried to make sure that nothing had been removed from the house, and when he was doing so, he discovered that ornaments worth Rs. 1575 had been removed. He then questioned Sagar Mal, who is said to have told him about his giving the ornaments to Magha. The matter was reported in the Thana. Later, on search, some of the ornaments were recovered from the shop of Magha. The remaining ornaments were recovered from the house of Deepchand itself, where they had been buried.

3. Both Sagar Mal and Magha were prosecuted, one under Section 380 and the other under Section 411 of the Indian Penal Code. Both of them are said to have made confession before a Magistrate, though both later retracted these confessions. The learned Magistrate acquitted both Magha and Sagar Mal. No appeal has been filed against the acquittal of Sagar Mal; but the State has filed this appeal against the acquittal of Magha.

4. It is the admitted case of the parties that some ornaments, which had been pawned with Deepchand, were recovered from the shop of Magha. The contention on behalf of the prosecution is that under these circumstances it should be presumed under Section 114, Illustration (a) of the Indian Evidence Act, that Magha was a guilty receiver, if not the actual thief. Magha's explanation in Court about the recovery of these ornaments was that they had been given to him by the wife of Deepchand, who was accompanied by her son Sagar Mal also, for repairs and cleaning.

5. In the first place, once Sagar Mal is acquitted, and there is no appeal against that acquittal, it cannot be said that these ornaments were stolen by Sagar Mal, and given by him to Magha. The case against Magha, therefore, rests entirely

upon the recovery of certain ornaments from his shop, and the presumption to be drawn under Section 114, Illustration (a) of the Indian Evidence Act. Over and above this, there is the retracted confession made by Magha. So far as that confession is concerned, it was not believed by the trial Court to be voluntary. We are not disposed to disagree with that view of the trial Court. We may point out that Magha was produced from police custody before the Magistrate, who gave him a few minutes, and then started recording his confession. Only two questions were put to him before his statement was taken down, namely, that if he made the confession, it would be given in evidence against him, and whether he was making the confession voluntarily. It is doubtful whether the Magistrate even told him before taking down his confession that he was not bound to make a confession, though the certificate at the end of the confession is in the form provided in Section 164 of the Code of Criminal Procedure. Considering that Magha was coming direct from police custody, the Magistrate did not try to find out from him whether he had been threatened or induced to make the confession. Under these circumstances, the estimate of the trial Court that the confession was not voluntary appears to us to be correct, and we are not prepared to place any reliance on this confession.

6. The next question is whether a presumption should be drawn in this case under Section 114, Illustration (a), to the effect that Magha is a thief, or, at any rate, a guilty receiver, taking it for granted there had been a theft in the house of Deepchand, though even this has not been fully proved in this case. We may point out that the Court may make such a presumption, unless the person in possession of stolen goods can account for his possession. In this case Magha has given an explanation of his possession, namely, that these ornaments had been handed over to him by Deepchand's wife and son for repairs and cleaning. Considering that Magha is a goldsmith, this explanation is a, very reasonable and probable one. Learned Assistant Government Advocate, however, argues that Magha has not proved satisfactorily that these ornaments were handed over to him by Deepchand's wife and son for cleaning and repairing. It is, in our opinion, not necessary for an accused to prove up to the hilt by evidence that the explanation given by him is correct. It is enough, if the explanation given by him is not inherently or palpably false. In the present case, the explanation that has been

given is, as we have said, very reasonable and probable. In this connection we may refer to three cases in support of our view.

7. The first case is 'OTTO GEORGE GFEL-LER v. THE KING', AIR 1943 P C 211. In that case the accused person gave an explanation as to how he came to be in possession of the stolen goods. The law with respect to such explanations was laid down by their Lordships of the Privy Council in the following terms: 'Upon the prosecution establishing that the accused were in possession of goods recently stolen they may in the absence of any explanation by the accused of the way in which the goods came into their possession which might reasonably be true find them guilty, but if an explanation were given which the jury think might reasonably be true, and which is consistent with innocence although they were not convinced of its truth, the prisoners are entitled to be acquitted inasmuch as the prosecution would have failed to discharge the duty cast upon it of satisfying the jury beyond reasonable doubt of the guilt of the accused.'

8. The next case is 'KESHABDEO BAGAT v. EMPEROR', AIR 1945 Cal 93. There the accused was said to be a friend of the cashier of a certain firm. That cashier had made defalcations, and passed on certain cheques to Keshabdeo. Keshabdeo's explanation was that he had received those cheques through Haranandan, who was also said to be a friend of the cashier, in the ordinary course of business, and he had no idea that the cashier had committed forgery, and passed on forged cheques to him. While dealing with Illustration (a) of Section 114 it was held in this case that 'It is not the law that if the accused fails to account for his possession of the goods said to be stolen goods he must be convicted, if the other proved facts of the case do not predicate guilt. 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. The accused is not required to prove his explanation by adducing substantive evidence. In many cases it may be impossible for him to do so, particularly if he alone knows the facts for he cannot give evidence on oath on his own behalf.'

9. The last case is 'JAGANNATH v. EMPEROR', AIR 1945 All 19. The case related to the theft of a buffalo, and the accused Jagannath's explanation was that

he had purchased it from one Chandar Pal for Rs. 132/-. When Jagannath was arrested, he and Chandar Pal were going together, and Chandar Pal ran away immediately on the arrival of the police, while Jagannath was caught along with the buffalo. While dealing with Illustration (a) of Section 114 the law was laid down as follows: 'The Court is not bound to draw a presumption under Section 114, Illust. (a). It is in the option of the Court to draw it. But it does not, in any way, shift the burden of proof to the accused. The words can account for its possession do not mean that the accused must prove it positively that he received the property in the manner indicated by him. If the explanation given is not inherently improbable or palpably false and the Court or the jury trying the case find it to be reasonably true, the adverse presumption shall be deemed to have been rebutted. The meaning of the words 'reasonably true' appears to be that the explanation must be sufficient to cast a doubt on the guilt of the accused & in the case unless the prosecution proves beyond reasonable doubt that the accused received the property knowing it to be stolen, the benefit of the doubt shall go to him.'

10. Following these principles, we are of opinion that the accused Magha, in this case, has given a very reasonable and probable explanation as to how he came to be in possession of the property. That explanation throws the greatest doubt on the story of the prosecution. The prosecution has done nothing to prove that that explanation should not be believed, particularly when we remember that the main culprit Sagar Mal has been acquitted and that there is no appeal against that acquittal. We therefore, dismiss this appeal.

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