

Koti Darbar Vs. Ram Chand

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Court : Himachal Pradesh

Decided On : Jul-11-1949

Reported in : 1950CriLJ160

Judge : Bennerji, J.C.

Appellant : Koti Darbar

Respondent : Ram Chand

Judgement :

Bennerji, J.C.

1. Under Section 24 of the Koti State Courts Act. corresponding to Section 417, Criminal P.C., the Koti caber directed the Public Prosecutor to present an appeal to the Court of the Chief Judicial Officer at Kasumpti against an order of the Magistrate, First Class, Sanjauli (Koti State) dated 21st December 1946, acquitting the respondent, Earn chand, of an offence Under Section 411, Penal Code, Ad appeal was accordingly presented and was pending in the Court of The Chief Judicial Officer at Kasumpti.

2. By virtue of the Notification No. J-79-I5/48, lated 14th January 1919, this appeal has been transferred to the Judicial Committee for disposal.

3. On 8th- October 1945, the manager of a Hotel in Simla reported to the police that several iheffca had taken place in the hotel during the j light of 7th October

1945. On 9th October 1945, the respondent was arrested by the Simla police on suspicion. On 11th October, the respondent was taken to Sanjauli in Eoti State for discovery of stolen articles. It was alleged by the prosecution that the respondent, accompanied by Sardar Sahib Singh (p.w. 8), Inspector of Police, Sanjauli, Sardar Pritam Singh (P.W. 1) Sub-Inspector of Police, Sadar, Simla and one Amar Nath (p.w. 5) of Simla, went to the shop of one Raja Ram. The respondent then went into the shop and brought out a bundle, sewn in cloth and handed it over to the police in the presence of Amar Nath and Lala Hansraj (brother of Raja Ram). He then took the party to another shop of one Raja Jagat Ram. He went in and brought out a gunny bag, inside which four bundles were found. On return from Jagat Ram's shop, the bundle recovered from Raja Ram's shop was opened. All these bundles, the prosecution alleged, contained articles stolen from the guests of the hotel. Two recovery lists were made, Sx. PA. and p B. Raja Ram and Jagat Ram stated that the respondent had come to their shops early morning on 9th October and left the Mandala saying that he would call for them before taking the bus to Narkanda.

4. In November 1945, the police, Sardar Simla, submitted several charge sheets against the respondent Under Sections, 380 and 457, Penal Code, in the Court of the Magistrate, Second Class, who, on 23rd November 1945, framed a charge under Section 411, Penal Code (receiving stolen property), after having recorded the evidence of the owners of stolen articles and other witnesses. On 18th February 1946, an objection was raised before him by the counsel for the accused that, after having framed the charge Under Section 411, Penal Code, he had no jurisdiction to try the accused as the subject-matter of the offence constituting the charge was recovered at Sanjauli, outside the jurisdiction of Simla (British India). What happened between 18th February and 20th March 1946, is not known as the records were sent to the Political Agent, Simla Hill States, through the District Magistrate, Simla. On 20th March 1946, Sardar Sahib Singh, Inspector of Police, Sanjauli, registered an offence Under Section 411 Penal Code, to have been committed by the respondent and forwarded the charge sheet to the Magistrate, Sanjauli, who, on 4th April 1946, recorded Borne evidence for a prima facie case 51-Cr. L, J. 21 and 22 for the purpose of extradition. Eventually, on 6th August 1946, the respondent was placed before Shri B. D. Sharma, Magistrate, First

Clasa, Sanjauli, for trial. The defence was that the respondent was taken to Sanjauli, but he did not produce any bundle or bag containing stolen articles. On 21st December 1946, the learned Magistrate, by an order holding that the 'case against the accused Under section iU, Penal Code, has not been proved,' acquitted him.

5. A little over five months, that is, on 7 the June 1947, after the date of the above order of acquittal, an appeal was presented to the Court of the Chief Judicial Officer at Kasumpti, as al ready stated.

6. The order-sheet of the learned Chief Judicial Officer is worthy of perusal. It throws much light on the indifference, irresponsibility and in-competence of all those, who were then in charge of the administration of justice. From 7th June 1947, the date of the presentation of the appeal till 14th January 1949, for a little over a year and a half, the learned Chief Judicial Officer was helpless in the sense that his orders were not complied with by thQ officers of law and justice. On 9th February 1948, the following order ap-pears on the order sheet;

No one is present. The State Advocate has applied for adjournment as he is unable to attend this Court today dua to come other engagements. There is no reply from the District Magistrate, Koti, regarding the warrant of arrest issued against the respondent. The District Magistrate be asked the reasons for this default. Issue a fresh warrant of arrest marked urgent for service, Case to some up on 10th March 1948.

7. This is sad reading but conditions were no better six months after the integration. On 31st' December 1948, the learned Chief Judicial Officer makes the following order:

Again no one ia present. Ask the Government to make arrangements for representation and inquire about the warrant and the notices. To come up on 14th January 1949.

8. A fortnight later, that is, on 14th January 1949, the learned Chief Judicial Officer's order ia as follows:

Present B, Sita Bam Advocate for the Crown (appellant). The respondent is absent. He has not been served. Issue fresh notice to him with directions for service Under Sections 70 and 71, Criminal P.C. for 16th March 1949.

9. Fortunately for the Court of the Chief Judicial Officer, the Notification No. j-79-15/48, dated 14th January 1949, issued by the Chief Commissioner, acting as Darbar, saved a difficult situation. It is extremely regrettable that such a state of affairs should continue even after the integration on 15th April 1948.

10. Referring to Government appeals against an order of acquittal, their Lordships of the Privy Council in *Sheo Swarup v. Emperor* A. I. R (21) 1934 P.C. 227 : 36 Cr.L.J. 786 P.C. laid down the following principles:

Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusion upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses ; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial ; (3) the right of the accused to the benefit of any doubt ; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice.

11. I may also refer, on this point, to a Full Bench Ruling of the Allahabad High Court, *Emperor v. Shree Janak Pande*, A I.R. (21) 1934 ALL. 27 : 35 Cr.L.J. 36, p. B. It was held in that case that the High Court ought to bear in mind in dealing with appeals against acquittals that there is a presumption of innocence in favour of the accused, still further strengthened by his acquittal and that the trial Court was in a better position to judge the credibility of the witnesses examined before it and

therefore, great weight is to be attached to its view.

12. Bearing the above observations in mind, in an appeal by the Government from an acquittal, the accused starts, in my opinion, with a double presumption in his favour. Firstly, there is the rule that it is for the prosecution to make out their case and until they do so, beyond all reasonable doubt, the accused must be presumed to be innocent; and secondly, that the accused having succeeded in securing an acquittal, the superior Court will not interfere until the Crown shows conclusively that the inference of guilt is irresistible.

13. I may now proceed to examine the evidence which has been produced in this case in order to decide the question as to whether the accused-respondent committed the offence with which he was charged.

14. The evidence laid before the trial Court can be conveniently divided into two parts, as counsel for respondent has rightly contended. There was the evidence of those who appeared in the Court, namely, of Mr. Holmes, manager of the hotel, Mrs. Hale, a resident of Phillaur, who was staying in the hotel and Abdul Rashid, a tailor, who identified a coat belonging to one Mr. Menon, a guest of the hotel and Amar Nath, Jagat Bam, Hansraj, Pritam Singh and Sahib Singh, the last two being police officers, one of Simla and the other of Sanjauli. The other part consisted of the evidence transferred to the record Under Section 33, Evidence Act on the ground, as stated by the investigating officer, Sahib Singh that the witnesses could not be found or whose presence could not be obtained without much delay or expense.

15. The learned Counsel for the respondent argued that the latter evidence cannot be received as evidence in this case, firstly, the former proceeding in the Court of the Magistrate II Class, Simla, was between the Crown and the accused. The latter proceeding in the Court of the Magistrate, Sanjauli, was between Koti Dar-bar and the respondent. He referred to the proviso to Section 33, Evidence Act; secondly, the statements recorded by the Court of Second Class Magistrate, Simla, cannot be transferred in the Court of the Magistrate, Sanjauli, because the former Court was *curiam non judice* or in other words, incompetent to try the offence with which it charged the accused before it.

16. With regard to the first contention, I am of opinion that it is devoid of force. Explanation to Section 33 Evidence Act, makes it clear that a criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and; the accused. The prosecutor in both The proceedings were owners whose articles were stolen from the-hotel, I, therefore, dismiss this contention.

17. As regards the second contention, in my opinion, it has considerable force, in spite of very able argument addressed by the Public Prosecutor that in order to ascertain the meaning of Section 33, Sections 41, 44, Evidence Act and Section 512, Criminal P. C. should be referred to. According to the learned Public Prosecutor all that Section 33 contemplates is that the evidence should be given in a judicial proceeding or before any person authorized by law to take it. I, however, agree with the learned Counsel for the respondent that as soon as the Magistrate II Class, Sadar Simla, concluded that he had no jurisdiction to try, his Court became coram non judge from the very outset or, in other words, all evidence recorded by him became void ab initio for the 'purposes of Section 33, Evidence Act. I am supported in this-view by the decisions of several High Courts in India. I refer to the most important one, upon which I rely, *Buta Singh v. Emperor* A. I. R (13) 1926 Lah. 582 : 27 Cr.L.J. 1168, where a Division Bench of the Lahore High Court held as follows:

The first trial was not a judicial proceeding as there is a final order by this Court ruling it to have been without jurisdiction. It was held in *Regina v. Rami Redid* 3 Mad, 48, that a proceeding before a Judge or Magistrate who had no jurisdiction was coram non justice and that the evidence of witnesses given in such a proceeding could not be used Under Section 33, Evidence Act on a re-trial before a competent Court.

18. The learned Public Prosecutor argued that in the above cited Lahore case, the High Court ruled the proceeding in the lower Court to have been without jurisdiction. Whereas here, the Magistrate II Class, Simla, himself, after recording evidence and framing the charge, found that he had no jurisdiction. In my opinion, the result is the same whether the Court itself finds that it has no jurisdiction or a higher Court rules it to be so; the proceeding in either case becomes proceeding

coram non judice. I shall, therefore, hold that the evidence of these witnesses transferred from the record of the Magistrate II Class, Simla, cannot be received in evidence against the respondent in the Court of Magistrate 1st Class, Sanjauli.

19. The evidence of these witnesses, who did not appear before the Magistrate 1st Class, Sanjauli, may, therefore, be taken as struck out of the record.

20. The evidence of the following witnesses who appeared on behalf of the prosecution at Sanjauli is, therefore, worthy of consideration, Mrs. Rule of Phillaur, Mr. Holmes, manager of the hotel, Abdul Rashid tailor, Amar Nath, Hansraj, Jagat Rm and the two police officers, Pritam Singh and Sahib Singh.

21. Counsel for the respondent argued that the learned Magistrate was right in his conclusion that the theft had not been proved. The relevant portion of the judgment runs as follows; 'There is no doubt that the property produced ia a Btolen property but there is no iota of evidence to prove that from where did the accused receive the Btolen property and when. The trend of the prosecution evidence shows that the accused is the person, who is directly involved in the thefts. He himself stole the above articlea from Simla and kept them at Sanjauli.... Section 411, Penal Code deals with dishonestly receiving the stolen property and/or having honestly received, dishonestly retaining that. There must be some proof that some person other than the accused had possession of the property before the accused got possession of it. The prosecution evidence ia quite silent on the point. The act of the accused amounts to keeping of the property with another person which is not within the scope of Section 411, Penal Code.

22. I am bound to point out that that is an entire miaappreiation of the law as embodied in Section 411, Penal Code. Once the property has been proved, beyond all reasonable doubt, to have been stolen and properly identified, the possession of such property or retention of it knowing it to have been stolen will amount to an offence. It is not necessary for the prosecution to prove from where the accused received the Stolen property or the time when he did receive that. The gist of the offense Under Section 411, Penal Code is that the property must be stolen property and that the accused dishonestly receives or retains it knowing or having reason to believe the same to be stolen property.

23. The property, was, in my opinion, sufficiently identified by the owners, Mrs. Hale, Mr. Holmes and Abdul Rashid. There is not the slightest doubt that the property contained in the bundles and the gunny bag (exs. pi to P-15), having been identified by Mrs. Hale, and P 16, the curtain, identified by Mr. Holmes, manager of the hotel and ex. p-18, the coat, identified by Abdul Rashid tailor, who made it for Mr. Menon, a resident of the hotel, was stolen property.

24. The next question is if the respondent received it dishonestly or retained it knowing or having reason to believe the same to be stolen property. The only evidence on this point against the respondent is that he took the police to Sanjauli and went into the shops and himself brought out the bag and the bundle, which contained the stolen property. The learned Public Prosecutor has relied upon several authorities, to which I Shall now refer, that from this conduct a presumption arises which is strong and safe enough to convict the respondent.

25. In *Misri v. Emperor*, 81 ALL. 592 : 10 Cr.L.J. 212 F.B., one Mt. Misri was found guilty by the Court of Sessions of a murder of a girl for the sake of ornaments. Part of the evidence against her consisted of the fact that she took the police and others to a certain place and there pointed out and produced certain ornaments, which were proved to be those worn by the deceased, The Court found as a fact that the police officer had made a promise to the accused prior to her pointing out the ornaments to the effect that if she produced the girl's ornaments, she would be let off. The question before the full Court was whether the conduct of the accused, pointing out the articles stolen, was admissible in evidence or whether 8. 27 of the Evidence Act applied. It was held that the conduct or acts of the accused were not dealt with by 8. 27 and were relevant Under Section 8. When the appeal was heard by the High Court after this decision, it was held that the discovery was perfectly genuine and consequently the conviction and sentence were affirmed.

26. In *Ganu v. Emperor* A. I. R (19) 1932 Bom. 286 : 33 Cr.L.J. 396, Broomfield J., agreeing with Beaumont C. J., held that the fact that all the accused either produced or accounted for the money stolen then this fact of production was admissible Under Section 8, Evidence Act and the circumstances in which the production took place were also relevant Under Section 9. The learned Public

Prosecutor drew my attention to a passage in this judgment. It runs thus :

It is also very material to bear in mind that when some months after this, the accused were examined, they did not even then allege that the money belonged to them ; they either declined to make any statement or in most cases they have denied to having produced any property at all.

In this case, Beaumont C. J., held that the accused had said that he would produce the share and gave the information to the police. This part was relevant saying that the accused had hidden the property, which they were willing to produce. It will be remembered that this is a case where the accused produced the money which was in their possession. But I do not find anywhere in this judgment that the fact of the discovery alone was considered sufficient for conviction.

27. The learned Public Prosecutor next referred to a case, the facts of which somewhat appear to resemble the present case. In *Sudam v. Emperor* A.I.R. (20) 1933 Cal. 148 : 34 Cr.L.J. 675), the evidence was that Sudam took a police officer to two separate places, which, upon his direction, were dug out and incriminating cocaine was found there. It was clear that the accused was with the police for a considerable time and walked with him to the two places, where he pointed out the spot. The accused was held to have been rightly convicted.

28. In *Bafiqueuddin v. Emperor* A.I.R. (22) 1935 Orl. 184 36 Cr.L.J. 808 (P.B.), four accused persons were tried for offences Under Sections 302 and 392 (robbery). Some articles were produced by two of them jointly. Mukerji, J., in delivering the judgment of the Court observed:

As regards the production of article, the evidence is relevant as evidence of conduct Under Section 8, Evidence Act. What we have on the record so far as the prosecution witnesses examined on this point are concerned, is only the fact that the article were pointed out by accused persons, If there was any statement made by the accused person at the time of the production or just before the production of articles, then this statement may very well go in as part of the conduct under the provisions of Section 8, Evidence Act.

[28a] In *Mstl. Jamunia v. Emperor* A.I.R. (23) 1936 Nog. 200 : 37 Cr.L.J. 1047, Mt. Jamunia was sentenced to death for murder of a girl, Jayabai. She was also convicted of robbing Jayabai of her ornaments Under Section 392, Penal Code. In that case Jaggannath, a witness, deposed that the accused said she would recover the deceased ornaments in the field of Gora. The evidence was that the ornaments were buried about a cubit deep and that she herself dug them up. It was held by the Division Bench that the question was not so much whether the accused was in physical possession of the ornaments buried in the field though, as a matter of fact, a person who buries treasure in a spot unknown to others is really in possession of it, whether it is in a field or in his own house. The important point is rather that the circumstances and the conduct of the accused pointed out to her knowledge of the exact spot where the ornaments were. Such conduct was held to be admissible Under Section 8. Evidence Act, following the Allahabad Full Bench ruling in *Misri v. Emperor*, 81 ALL. 692 : 10 Cri. L.. J. 212 P. B., discussed above. But their Lordships did not base the conviction upon the evidence of this conduct alone. It was taken in conjunction with other evidence of the accused having been seen with the deceased a little before the commission of the crime.

29. The last case relied upon by the learned Public Prosecutor is *Emperor v. Nanua* A. I. R (28) 1941 all, 145 : 42 Cr.L.J. 485. Nanua was tried for the murder of one Mst. Shyama. During the investigation, he handed over ornaments and other articles to the police. Ismail and Hamilton, JJ., held that the fact that in the present case when the appellant took in his own hands certain articles and handed them over, he made certain statement {sic}. But there was no evidence in this case that he made any statement. From the fact that the appellant went to two different places and that from each of them, he took into his possession property that was with the deceased at the time of her murder and handed it over, the Court inferred that he knew that those articles were in those two places. Finally, the Court came to the conclusion that the ornaments were put in these places by the person who committed the crime but his conviction was affirmed not on this evidence alone. The appellant was seen a few paces behind the deceased going in the same direction very near the scene of occurrence just before the murder was committed. The confession of the accused was not totally disregarded. The concluding passage in this decision is important. It runs as follows:

Taking the cumulative effect of all the evidence which we have described, we come to the conclusion that the prosecution has succeeded in proving the guilt of the accused and we, therefore, setting aside the order of acquittal allow the Government appeal.

30. I have discussed in some detail the facts and circumstances of the decisions to which the learned Government Prosecutor called my attention. The real question for determination in all the cases was whether any statement preceding or following the discovery fell within the provisions of Section 27 or was receivable in evidence Under Section 8 or 9, Evidence Act and further this discovery, accompanied with any statement preceding or following it, might be considered with other evidence to determine the guilt of the accused.

31. On behalf of the respondent, it is contended that when the property has been buried under the earth and later on dug up or produced by the accused, some High Courts are of opinion that the presumption of guilt is strong. Some High Courts, on the other hand, have expressed that this conduct only shows knowledge of the accused and nothing more.

32. In *Sohan Singh v. Emperor* A. I. R (17) 1930 Lah, 91: 31 Cr.L.J. 774, a Single Bench held that when the conviction was based on the only evidence that the accused pointed out three places from which the portions of stolen property were recovered and his father and brother were also suspected and eventually discharged, this evidence of discovery alone cannot support a conviction.

33. In *Hata v. Emperor* A.I.R. (30) 1943 Lah. 4 : 44 Cr.L.J. 186, another Single Bench held that where the basis of the conviction was that the accused produced certain stolen property from his house, the presumption would rather be that he had a clear conscience in the matter. On the other hand, if he had a guilty conscience, the presumption would be that he did this as a result of some pressure or inducement and the whole transaction stands on the same footing as an improperly obtained confession. Such induce-ment or pressure would presumably be within the knowledge of the prosecution.

34. The learned Counsel for the respondent relied particularly upon *Chavadappa v. Emperor A. I. R (32) 1946 Bom. 292 : 47 Cr.L.J. 51*. Twenty-five accused were charged with offences punishable Under Sections 457, 395 and 397 or in the alternative, Under Sections 412, Penal Code, The accused had committed dacoits and took away gold and silver ornaments, pieces of cloth, saris, dhoties, etc, worth Bs. 8,000 (rupees eight thousand), They had caused grievous hurt. Some of the accused produced stolen property, without making any incriminating statement, from a place not exclusively occupied by them or which was of the ownership of another person. It was held that the production of the property by itself would not necessarily prove his possession. It would, at the most, show that he had knowledge where the property was kept and concealed. But if the accused had made a statement to the effect that he had concealed the property at a particular place and he would produce it and if it was discovered in the consequence of that statement, it would be evidence of his possession, even though the stolen articles were kept or concealed in another man's property. The mere production, it appears, without any statement would only prove his knowledge whereas a statement preceding or following the discovery to the effect that he had concealed, would not affect from where the property was recovered. A careful perusal of the judgment would show that the evidentiary value of the production on discovery was taken into consideration with other evidence on record. It did not alone sway the Court into coming to a definite conclusion as to the guilt of the accused.

35. In *Moti Lai v. Emperor A. I.R. (27) 1940 Nag. 66 : 41 cr. L, J. 158* Moti Lai and others were tried for an offence Under Section 302 and also Under Section 392, Penal Code. The ornaments were produced by Moti Lai and judgment clearly shows that mere production of the ornaments alone was not sufficient to support a conviction. This production was considered with other evidence. It was held there that the statement made by Moti Lai that he would point out the ornaments would be admissible. But it would; only show his knowledge of ornaments but 'would not prove by itself his complicity in the crime of murder.'

36. In *Emperor v. Taduturu A.I.R. (27) 1940 Mad. 12 : 41 Cr.L.J. 242* it was pointed out that no presumption of guilt could be drawn from the recent

possession by the accused of; jeweler taken from the murdered persona. It appears in this case that the man was persistently questioned for hours throughout being under arrest. Then the statement was taken from him and he took the police to the house of his sister and there produced the jewellery, which was on the body of the deceased the day before. On this evidence alone, it was held that he could not be convicted. The concluding passage of the judgment runs thus :

But if the police in excess of zeal think fit to employ methods of this sort, they must expect results of this sort also.

37. After having reviewed the decisions, it can be concluded with certainty that all the High Courts are of opinion that it is not safe to convict a person solely upon the evidence of conduct which leads to discovery.

38. Here the respondent was taken to the two shops from where, it is alleged, he brought out the bundle and the bag, All the evidence against him is that they contained stolen articles. If he had voluntarily told the police to accompany him, then he must have a clear conscience. If not, if he were to have told them under inducement or pressure or persistent questionings, then his statement to the police leading to the discovery becomes as tainted as any confession extracted under pressure or threat or inducement.

39. I have given my most anxious consideration to the facts of the present case. I find there is no evidence on record excepting the fact that the respondent himself brought out the bundle and bag containing stolen property. There is no other independent evidence excepting the evidence of the two shopkeepers (Hanaraj and Jagat Earn) from whose shops they were recovered. It is in the evidence that Raja Ram, brother of Hansraj, was known to the respondent. If so, why should the respondent not deposit all the bundles in the shop whose owner was known to him and where all these hurdles could be kept in safety Why should he risk visiting another shop of Jagat Bam and leave the bundles in his charge, who was a total stranger to him Why should the shopkeepers not be curious when property left with them was not claimed for three days; from 9th till 11th October The answers to these questions make the evidence of these shopkeepers doubtful. Raja Bam has not been examined to corroborate the testimony of his brother, Hansraj. There is

no independent witness to support the respective story of Hansraj and Jagat Bam. Since the respondent did not turn up on 9th or 10th October, either of them must have discussed this strange deposit with some friends or acquaintances or felt curious to open them. Jagat Ram never knew the respondent from before and when the bundles were not claimed, it is very unlikely that he did not mention it to his brother, Jyoti Ram, who was then the head constable of the Sanjauli thana. It may be quite possible that the two shopkeepers might have received these stolen articles from the thief and in order to dispose of them, persuaded the respondent, who was going to Bashahr, to purchase them at a bargain price and the respondent having seen the articles left to fetch the price from Simla, where he was arrested. I do not agree with the learned Public Prosecutor that an inference from the conduct of the respondent in delivering the bundles irresistibly points to his guilt. In *Otto George Gellar v. The King* A. I. R (30) 1943 P.C. 211 : 45 cr. L. j. 241 P.C. (an appeal from West Africa) their Lordships of the Privy Council agreed that the law was correctly stated when the Judge told the jury that upon the prosecution establishing that the accused was in possession of goods recently stolen, the jury may in the absence of any explanation by the accused of the way in which the goods came into his possession which might reasonably be true, find him guilty, but that if an explanation were given which the jury think might reasonably be true and which is consistent with his innocence although they were not convinced of its truth, the accused is entitled to be acquitted.

40. In a case depending largely upon circumstantial evidence, there is always the danger that conjecture or suspicion may take the place of legal proof. As held by Jenkins O. J., in *Barindra v. King-Emperor* 57 Cal. 467 : 11 Cr.L.J. 453 the rules of evidence cannot be departed from because there may be strong moral conviction of guilt, for a Judge cannot set himself above the law which he has to administer.

41. It is very necessary that in all appeals against orders of acquittal, the Public Prosecutor must make out strong and cogent grounds to justify interference. The gravest suspicion against the respondent will not suffice to convict him of a crime unless the evidence establishes it, beyond all doubt.

42. My attention has also been drawn to the defective wording of the charge. Under Section 411, Penal Code, it is particularly necessary to state in the charge that he received or retained the stolen property knowing or having reason to believe the same to be stolen property. the charge appears to have omitted to mention that the respondent dishonestly received or retained the stolen property, knowing or having reason to believe the same to be stolen property. This ia an omission which may not be fatal to the case. This Court can amend this charge and send the respondent for a re-trial if there be sufficient evidence on record, which will justify this course. In my opinion, such a course, after nearly three years, will not be in the interests of justice.

43. In my judgment, after having carefully considered the value and weight of the evidence on record, it cannot be held that the inference of the guilt of the respondent ia irresistible or that the order of acquittal is clearly wrong or perverse involving a positive miscarriage of justice.

44. In the circumstances, 1 shall dismiss the appeal. The respondent need not surrender to his bail. I shall advise the Chief Commissioner to this effect.