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below that unless and until a municipal bye-law has by Government notification been declared to be unlawful a criminal court must accept it to be valid and binding, is not correct. The accused person is entitled to say that he has committed no offence if he has been prosecuted for having committed a breach of a bye-law which is *ultra vires*. In this particular instance, when the point was not taken in the courts below and no evidence was produced, we are unable to hold that the bye-law was illegal.

We accordingly allow this revision in part and set aside the conviction of the accused under section 155 of the Municipalities Act and acquit him of that charge and direct that the fine, if paid, be refunded. We uphold the conviction and also sentence under section 299 of the Act.

Before Mr. Justice Bajpai

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EMPEROR *v.* HORI LAL*

Indian Penal Code, section 411—*Evidence Act* (*I of* 1872), *section* 114, *illustration* (*a*)—*"Account for his possession", meaning of—Accused found in possession of stolen goods soon after the theft is not bound to prove affirmatively that he came by the goods innocently—Criminal trials—Burden of proof—Whether it can shift on to accused.*

In a criminal case the onus is on the prosecution to prove beyond reasonable doubt the guilt of the accused. That onus never shifts from the prosecution to the accused.

Illustration (*a*) to section 114 of the Evidence Act means that where the accused person has been found in possession of stolen goods soon after the theft, the court may draw a presumption and may act on it if the accused cannot account for his possession, but this illustration does not mean that the burden of proof is shifted on the accused, so that he 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, —which in the opinion of the court may possibly be true. So, where a conviction under section 411 of the Indian Penal Code

*Criminal Revision No. 488 of 1933, from an order of I. M. Kidwai, Sessions Judge of Cawnpore, dated the 11th of July, 1933.

was based on the presumption aforesaid, the court saying that the burden of proving his *bona fides* was thrown on the accused and that the oral testimony on behalf of the accused to prove that he had purchased the goods from a certain person was not very reliable, it was *held* that the conviction was illegal.

Mr. *G. S. Pathak,* for the applicant.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

BAJPAI, J.:—Hori Lal was convicted by a Magistrate of the first class under section 411 of the Indian Penal Code. His conviction was confirmed in appeal by the learned Sessions Judge. Hori Lal was tried along with two other persons, namely Thakur Prasad and Gajodhar. The two latter were tried for an offence under section 379 of the Indian Penal Code, whereas Hori Lal was tried for an offence under section 411 of the Indian Penal Code. The facts appear to be that certain iron rods belonging to the Singh Engineering Company were loaded on a *thela* and were to be sent to the railway. While they were lying outside the premises of the company 25 of the rods on the *thela* disappeared and three of them were found on a *patri* in Bansmandi. The contractor and other servants of the company were investigating into the matter when they saw Gajodhar and Thakur Prasad trying to remove the three rods from the *patri* at Bansmandi. Thakur Prasad who is only a boy of 12 years was arrested on the spot, but Gajodhar made good his escape and while Thakur Prasad was being taken he saw Gajodhar and pointed him out to the persons who were escorting Thakur Prasad. Gajodhar was also arrested, and ultimately, on the information of Thakur Prasad, the house of one Hori Lal was searched and 22 iron rods of which 21 have been proved to belong to the Singh Engineering Company were recovered from his house. The learned Magistrate, by a curious reasoning which was not acceptable to the Judge and which is not acceptable to me, acquitted Thakur Prasad and Gajodhar Prasad of an offence under section 379 of the Indian

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Penal Code. He has, however, convicted Hori Lal under section 411 of the Indian Penal Code.

In revision it is contended before me that the courts below misdirected themselves on a question of law and as such the conviction recorded by them is not maintainable. It is argued that it is the duty of the prosecution in a charge under section 411 of the Indian Penal Code to prove that the accused dishonestly received or retained stolen property, knowing or having reason to believe the same to be stolen property. The prosecution, therefore, has got to prove (1) that the property was stolen, (2) that it was received or retained by the accused and (3) that the accused knew or had reason to believe the property to be stolen. It is further contended that there is no such thing as shifting of the burden of proof from the prosecution to the accused in a criminal case. It has been held by their Lordships of the Privy Council in *Basil Ranger Lawrence* v. *King* (1) that "It is an essential principle of criminal law in English Jurisprudence that a criminal charge has got to be established by the prosecution beyond reasonable doubt." It was held in *Hathem Mondal* v. *King-Emperor* (2) that "In a criminal case the onus is on the prosecution to prove beyond reasonable doubt the guilt of the accused. That onus never changes." This is almost elementary and this view has been consistently adopted by all the courts. Now the prosecution may prove the three ingredients mentioned by me above, either by positive evidence or by certain presumptions. Section 114 of the Evidence Act, and specially illustration (*a*) to that section, speaks of a presumption. It is said that the court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. It is argued on behalf of the Crown that the courts below acting upon this presumption have convicted the

(1) [1933] A.L.J., 1025. (2) (1920) 24 C.W.N., 619.

accused and that they were perfectly justified in doing so. What this illustration means is that in the circumstances mentioned therein the court may draw a presumption and may act upon it if the accused cannot account for his possession, but this illustration does not mean that the burden of proof is shifted on the accused. The judgment of the court of first instance is not very satisfactory but even that court while drawing the presumption made certain observations which are not quite intelligible and to which exception might be taken by the accused. The property was undoubtedly stolen on the 11th of April, 1932, and it was recovered from the house of the accused on the succeeding day, and therefore, if the accused could not account for his possession the court could presume guilty knowledge. It is the case of the accused that he bought the goods from Gajodhar and he has produced evidence in support of his defence. The court of first instance says that "if it really was Gajodhar who brought them, he should have been suspicious of him." Now it does not appear why the accused should have been suspicious if the goods were brought by Gajodhar. More serious objection can, however, be taken to the judgment of the lower appellate court, which says that "there can be no doubt that the finding of these rods so soon after the theft at appellant's godown threw the burden of proving his *bona fides* in respect of them on the appellant." This is the mischief into which the learned Sessions Judge has fallen inasmuch as he thinks that in a criminal case the burden is, in some cases, shifted to the accused. He then goes on to say that the oral testimony on behalf of the accused is not *very* reliable. When section 114 and illustration (*a*) of the section speaks of the court's power to draw a presumption and act upon it, it says that that presumption can be drawn unless the accused can account for his possession. GHOSH, J., in *Bhutnath Mondal* v. *Emperor* (1), held that "This does not mean that the accused must prove affirmatively that he came

(1) A.I.R., 1931 Cal., 617.

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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., in a separate judgment said that "If he (the accused) 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." This is a view of law with which I agree. Now in the present case the courts below were in error in thinking that when the distance of time between the theft and the recovery of the stolen property from the possession of the accused is short, then the burden shifts on the accused to prove affirmatively that he came by the possession of the property in an innocent manner. This is clear from the fact that the lower appellate court says that the burden of proving his *bona fides* was thrown on the accused and that the oral testimony was not *very* reliable. The evidence produced by the accused is fairly satisfactory.

I have, therefore, come to the conclusion that the findings recorded by the courts below are vitiated by the fact that they did not appreciate clearly the law applicable to this case, and for this reason I allow this application, set aside the conviction and the sentence of the applicant and direct that he need not surrender to his bail.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice King

EMPEROR *v.* CHANDAI*

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Railways Act (IX of 1890), section 122—"Unlawfully" entering railway premises—Entry without permission, express or implied, is unlawful—Dismissed railway porter entering platform for purpose of carrying passengers' luggage.

The word "unlawful" in section 122 of the Railways Act has practically the same meaning as the word "illegal" in the Indian Penal Code and includes "actionable". An entry upon railway

*Criminal Reference No. 840 of 1932.