

## APPELLATE CRIMINAL.

*Before Mr. Justice Lentaigne.*

SONA MEAH

v.

KING-EMPEROR.\*

1924  
 July 25.

*Penal Code (XLV of 1860), section 408—Servant giving a false account of the loss of goods entrusted to him—Presumption of misappropriation—Evidence Act (I of 1872), sections 106, 114.*

Where property is entrusted to a servant and such servant fails to return or to account or gives an account which is shown to be false and incredible, it is ordinarily a reasonable inference that he has criminally misappropriated the property so entrusted to him and dishonestly converted it to his own use. In such cases the Courts are entitled to draw hostile inferences and presumptions from the action and statements of the servant.

*Villa*—for the Appellant.

*Vakharia*—for the Crown.

LENTAIGNE, J.—The appellant has been convicted of an offence under section 408, Indian Penal Code, and sentenced to one year's rigorous imprisonment. It is not disputed that on the afternoon of the 27th December 1923 the complainant, Hamdu Meah Chowdhury, entrusted 2,680 gunnies to the appellant, who was in his employment as a sampan plier, with the direction to take the gunnies in sampan No. 1092 and deliver 1,180 gunnies to Messrs. Bulloch Brothers' godown, 1,000 to one Maung Tun and 500 to War Toke Lone Co., at Seikkyi, Kanoungto. The following day the appellant came and reported to the complainant that the sampan had come into collision with a sailing vessel in the Rangoon River near No. 1 Buoy, with the result that the sampan capsized and all the gunnies were thrown into the river.

---

\* Criminal Appeal No. 653 of 1924 from the order of the Fourth Additional Magistrate of Rangoon in Criminal Regular Trial No. 18 of 1924.

On the same day at about 12-35 p.m. the appellant reported to Head Constable Maung Tha Ya at the Barr Street Police Station that the sampan had collided with a cargo boat and that he did not know where the sampan and gunnies had drifted.

It is settled law that where property is entrusted to a servant, it is the duty of the servant to give a true account of what he does with the property so entrusted to him. If such servant fails to return the property or to account or gives an account which is shown to be false and incredible, it is ordinarily a reasonable inference that he has criminally misappropriated the property so entrusted to him and dishonestly converted it to his own use. In such cases the Courts are entitled to draw hostile inferences and presumptions from the action and statements of the servant. The provisions of sections 106 and 114 of the Indian Evidence Act, 1872, can be relied on in support of these propositions.

In the case now before me it is obvious that the accounts given by the appellant and his witnesses were false in material details; and that there are other circumstances which indicate that the appellant did not honestly lose the property entrusted to him. If the appellant's sampan had been upset in the manner described by him, it would obviously have floated, and the appellant and the sampan and the gunnies would in the ordinary course have floated together up the river and at about the same pace on the rising flood tide. The most natural course for the appellant to adopt would be to hold on to his sampan and, if possible, to climb on to it even though it should be upside down. In a river which is usually well frequented by small craft such as sampans, he would have been picked up quickly, and it would have been then possible for him as an

924

SONA MEAH  
2.  
KING-  
EMPEROR.

L'ENTAINNE.  
J.

1924  
 SONA MEAH  
 v.  
 KING-  
 EMPEROR.  
 LENTAIGNE,  
 J.

honest servant to get his sampan and gunnies salved at the same time.

The statement made by the appellant to the Head Constable at 12-35 p.m. to the effect that he did not know where the sampan and gunnies had drifted, is obviously a false statement and is shown to be false even by his own witness, because the first witness examined by the appellant, if he is believed, has proved that he and the appellant had salved the sampan at about 5 a.m. on the previous morning. Likewise, the statement, that he did not know where the gunnies had drifted to, is shown to be false by the same witness who describes how he saw the gunnies floating in the water. This witness swears that he salved the sampan about a quarter of a mile from the place where he saved the appellant and picked the appellant up. I am satisfied that in the ordinary course he would have found the appellant near his upturned sampan if not actually hanging on to it or on top of it.

Moreover, about three of his witnesses describe the gunnies as floating on the water, and one of these was the man who claims to have picked the appellant up. The appellant would necessarily have seen such gunnies and if he was an honest servant, it was his duty to get the gunnies salved at once, and on that version of his witnesses they could have been easily salved. The only reasonable inference that I can draw from this failure to salve the gunnies is either that the story is a false one and that the appellant was not upset at all or that he intentionally let the gunnies drift away, presumably in order that his accomplices might pick up the gunnies. On either aspect the inference to be drawn would be one as to the guilt of the appellant. I have noticed other improbabilities in the story as told by the

witnesses of the appellant, but it is unnecessary to discuss them, as the above points show that the conviction was fully justified.

The complainant produced evidence as to the alleged transferring of the gunnies by the accused to another sampan; but there are obvious weak points in that evidence, and on the view which I take of this case it is unnecessary to discuss them.

For the above reasons I must hold that the appellant has given a false account as to his loss of the gunnies and that the only reasonable presumption to be drawn from his account is that he is guilty of the offence charged against him and that he has been rightly convicted. As regards the sentence I do not think a sentence of one year's rigorous imprisonment too much for this class of offence.

For these reasons I dismiss the appeal.

1924  
SONA MEAH  
v.  
KING-  
EMPEROR  
LENTAIGNE.  
J.

## APPELLATE CIVIL.

*Before Mr. Justice Duckworth.*

MA MA E AND TWO

v.

MAUNG TUN.\*

1924  
June 6.

*Redemption of a mortgage with possession—Defence of a sale, subsequent to the mortgage—Sale invalid for want of registration.*

In a suit for redemption, the defendants pleaded that subsequent to being put into possession as mortgagees in 1910, in consideration of a further payment made by them to the plaintiff in 1917, the land was sold to them outright but that they had no registered conveyance. It was found that the further payment had been made and that an invalid sale had taken place.

*Held*, that the plaintiff could not be allowed to take advantage of his omission to give a registered conveyance and that the defendants were entitled to retain possession.

\* Civil Second Appeal No. 279 of 1923 against the decree of the District Court of Mandalay in Civil Appeal No. 85 of 1923.