

(1919) 09 MAD CK 0018
In the Madras High Court
In Re: Jaimullabdin

Date of Decision : 26-09-1919

Acts Referred:

Evidence Act, 1872 — Section 114(a)

Citation : (1920) 11 LW 43 : (1920) 43 MLJ 489

Hon'ble Judges : Seshagiri Aiyar, J

Bench : Division Bench

Judgement

Seshagiri Aiyar, J.—The conviction must be quashed. The Sessions Judge begins his judgment by saying ""There is no time limit, however,

applicable to the presumption, in Section 114(a) of the Indian Evidence Act (I of 1872,"" The section is clear upon the point. It says 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."" Certainly 13 months after the theft is not "" soon after."" Moreover the evidence of P.W. No. 7

shows that he lost the articles some 2 or three years before. Even granting that the evidence of P.W. No. 1 is to be accepted in its entirety that the

articles now found out belonged to him, as pointed out in Ina Sheikh v. Queen Empress ILR (1885) Cal. 160 this is not a case in which the

accused should be called upon to explain his possession. Miller, J., in The District Magistrate of Bellary v. Obbava (1912) M.W.N. 529 took the

same view and that has since been approved in Criminal Revision Case No. 320 of 1919. I am in entire accord with the observations in Ina Sheikh

v. Queen Empress ILR (1885) Cal. 160 and I think the Magistrate was wrong in thinking that the accused was bound to explain his possession of

the articles.

2. I was told that there were other articles found in an open well in the compound of the accused which was accessible to all. It does not follow because certain articles were found in a well which could have been reached by other persons, that the accused should have put them into the well having known them to be stolen property. In my opinion the evidence upon which the conviction is based is wholly insufficient to sustain a conviction. I set aside the conviction and direct the bail bond to be cancelled.