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**(1943) 07 CAL CK 0009**  
**In the Calcutta High Court**

Keshabdeo Bagat

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision :** 30-07-1943

**Acts Referred:**

Negotiable Instruments Act, 1881 (NI) — Section 118(a)  
Penal Code, 1860 (IPC) — Section 109, 408, 414, 477A

**Citation :** AIR 1945 Cal 93

**Hon'ble Judges :** Lodge, J;Das, J

**Bench :** Full Bench

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**Judgement**

Das, J.—The two appellants in the two appeals, No. 407 of 1942 and 409 of 1942 which have been heard together, were tried at one trial before one of the Honorary Presidency Magistrates of Calcutta. There was one joint charge against both the appellants u/s 120B read with Sections 408 and 414 for having, between March 1940 and June 1940, conspired with one Lal Chand to commit offences under Sections 408 and 414, Penal Code. There were eight separate charges (a) to (h) u/s 408 read with Section 109, Penal Code, for having aided and abetted Lal Chand to commit criminal breach of trust as servant in respect of eight several cheques entrusted to Lal Chand by the complainant's firm of Sohon Lal Mohon Lal and yet another eight separate charges (i) to (p) u/s 414 read with Section 109, Penal Code, for having voluntarily assisted in the disposal of stolen property, to wit the same eight cheques belonging to the complainant knowing or having reason to believe the same to be stolen property. The charges (a) and (i) were directed against the appellant Keshabdeo and the charges (b) to (h) and (j) to (p) concerned the appellant Harnandan. The prosecution out of which the present appeals have arisen was initiated by a petition of complaint (Ex. 62) filed on 13th July 1942 before the Additional Chief Presidency Magistrate by one Mohon Lal Banthia on behalf of Sohan Lal Mohon Lal of No. 14/2, Old China Bazar Street, Calcutta, against three persons, namely, Lal Chand, Harnandan and Keshabdeo. The substance of this petition of complaint was as follows:

The complainant was the proprietor of the firm of Sohon Lal Mohon Lal. Lal

Chand was the cashier of his firm and Harnandan and Keshabdeo were friends of Lal Chand. Lal Chand used to keep books of accounts, receive money from the different constituents of the firm and sent them to the firm's bankers, viz. Yokohama Specie Bank and Mercantile Bank of India, after duly crediting such sums in the books of account of the firm. On 28th June 1940 the complainant found certain discrepancies in the cash book and called for an explanation from Lal Chand but the latter could not give any satisfactory explanation. Complainant thereupon asked Lal Chand to come early on the next day for verification of the entries in the cash book. On coming to the office next morning (29th June 1940), which was a Saturday, the complainant, to his utter surprise, found one table and some books and papers burnt to ashes and the cash books and suspense book missing. On enquiry he learnt from the Darwan of the landlord that he had seen Lal Chand going out of the office on the previous night with a bundle. Lal Chand not having turned up in the office the complainant sent his Darwan to Lal Chand's place to fetch him. The Darwan came back and reported that Lal Chand was unwell and would be late in coming to office. At the end of the day Lal Chand came and on being questioned denied any knowledge of the fire but admitted having taken the cash book and suspense account book for checking and promised to bring them on Monday (1st July 1940). On Monday Lal Chand did not turn up. The complainant became suspicious and sent his manager Kanyalal to bring the books and to ask Lal Chand to come to the office at once. Kanyalal came back and reported that neither the books nor Lal Chand could be found. Lal Chand has ever since remained absconding. The complainant grew more suspicious and on enquiry from different constituents and banks, found that Lal Chand had defalcated large sums of money having been aided and abetted by Harnandan and Keshabdeo who often used to come to the complainant's office. Particulars of four several items of defalcation of moneys covered by four several cheques to which I shall revert later on were set out in para. 10 of this petition. It was alleged that the complainant had been credibly informed that Keshabdeo had received several cheques amounting to about us. 11,000 from Lal Chand and converted the same. The petition concluded by saying that investigations were still being made and by reserving the right to proceed against the accused persons. The prayer of the petition was as follows:

In the circumstances the petitioner charges the accused under Sections 408, 477A and 109, Penal Code, and prays for process and search warrant for the cash books, suspense book of the firm and also for the cash book and ledger for 1939-1940 of the firm of Ranadhir Kumar Singh & Co., of which accused 3 is a partner and also an order upon the Bank of Behar Ltd., not to allow anybody to operate on the account of Harnandan Singh Sharma accused 2.

2. On the filing of the petition on 13th July 1940, summons was issued against Lal Chand only and a search warrant was issued for seizing the books of account of Ranadhir Kumar Singh and Co. On 15th July 1940 a petition (EX. 58) was put in on behalf of Ranadhir Kumar Singh and Co, Ltd., praying for stay of execution of the search warrant and offering to produce the account books when called

upon. This undertaking was accepted by the Court. The books of account were produced by Ranadhir Kumar Singh and Co. Ltd., and were inspected by the complainant on several dates from 18th July 1940. On 29th July 1940 the complainant filed a second petition of complaint which is Ex. 63 in this case. After stating that on 13th July 1940 process had been issued against all the accused (which is not correct, for process had been issued only against Lal Chand) and after reciting that further materials had been secured on further enquiries the complainant proceeded to state that the cheque (EX. 6) for Rs. 2000 drawn by Tarasankar Karfa and brothers in favour of the complainant's firm, though duly endorsed for being credited in that firm's banking account, was dishonestly again endorsed by Lal Chand and cashed through the Central Bank (Burra Bazar Branch) and credited in the account of Keshabdeo as having been received from Lal Chand through Harnandan who was the brother of the partner of Keshabdeo. The complainant alleged that Keshabdeo who was a constant visitor to the firm of the complainant knew that Lal Chand was getting a pay of Rs. 30 per month and could not possibly get a cheque for Rs. 2000 from the complainant's firm. He further alleged that Harnandan was only an honorary Music Master in a so-called Club, Bhartiya Seva Sadan at No. 31, Burtola Street of which Lal Chand and Keshabdeo were members and that Lal Chand lived there with Harnandan who had no other means. The complainant asserted that the three accused persons, who were thus closely related or intimately associated, were between March 1940 and June 1940, parties to a criminal conspiracy and in pursuance thereof systematically committed offences of criminal breach of trust and receiving stolen property as would appear from the cheques, the banking account and account books of Keshabdeo's firm. He pointed out that immediately after the cheques began to be misappropriated Lal Chand opened an account in his name in the books of Keshabdeo's firm in which he, Lal Chand, between 30th March 1940 and 30th April 1940 deposited an aggregate sum of Rs. 3550 by cheque and cash direct or through Harnandan and likewise withdrew various sums.

3. The complainant then proceeded to state that Harnandan opened an account with Bank of Behar in his own name for the first time in April 1940 and Lal Chand dishonestly made over, amongst others, 7 (seven) cheques for the aggregate amount of Rs. 8116-2-6 received by him on account of the complainant's firm to Harnandan who cashed them through this newly opened account with Bank of Behar. The particulars of the 7 (seven) cheques were then set out in a tabular form and it was alleged that Rs. 8116-2-6 was criminally misappropriated, Lal Chand dishonestly making over the cheques to Harnandan and Harnandan dishonestly receiving and cashing the same. Finally it was alleged that not only did Keshabdeo knowingly receive this misappropriated cheque for Rs. 2000 but he opened an account in the name of his partners' brother Haranandan and in that account received from Haranandan Rs. 3000 on 10th May 1940 and Es. 800 on 21st May 1940 although he knew fully that Harnandan could not possibly own the money and could not have a banking account. This petition then ended with

the following prayer:

In the circumstances it is prayed that your honour would be pleased to issue process against accused 2 and 3 u/s 120B read with Sections 408 and 411, Penal Code, and treat this petition as part of the original complaint filed by your petitioner on 13th July 1940.

4. After various adjournments the actual trial began on 22nd November 1940 when the case was opened. Examination-in-chief of the prosecution witnesses began on 5th December 1940 and went on with periodical breaks up to 12th July 1941. 34 witnesses were examined by the prosecution. Arguments on points of law relating to framing of charges were heard on several days during July and August 1941 and charges were ultimately framed on 27th August 1941 on lines which I have already indicated. The cross-examination of prosecution witnesses began on 10th September 1941 and continued with breaks up to 27th February 1942 when evidence was concluded and the case was adjourned till 24th March 1942 for examination of the accused persons. On the last mentioned date, two separate written statements were filed on behalf of Keshabdeo and Haranandan. No witness was examined on behalf of the accused. Final arguments were heard on several days between 24th March 1942 and 10th June 1942. Judgment was delivered on 17th July 1942 and the two appellants were convicted and sentenced as I have already mentioned and the trial which had assumed the proportions of a State trial ended after a year and eight months. It will be convenient, at this stage, to refer to the eight cheques which were mentioned in the second petition of complaint and which were the subject-matter of the several charges. They are as follows:

(1) Ex. 6. -- Crossed Cheque on Lloyds Bank dated 28th March 1940 for Rs. 2000 drawn by Tarasankar Karfa in favour of Sohon Lal Mohon Lal and bearing the following endorsements on the back thereof: Sohon Lal Mohon Lal, then, Lal Chand Jain, then, for Ranadhir Kumar Singh & Co. Ltd., by Keshabdeo Bhagat Director. It was collected through the Central Bank and credited to Ranadhir Kumar Singh & Co. Ltd., in latter's Pass Book -- Exhibit 7.

(2) Ex. 1, -- Crossed Cheque on Bank of India dated 19th April 1940 for Rs. 3300 drawn by Vinayak & Co, in favour of Sohon Lal Mohon Lal and endorsed as follows: Sohon Lal Mohon Lal, and then Haranandan Singh Sharma. This was collected through the Bank of Behar and credited to the Savings Bank account of Haranandan Singh.

(3) Ex. 2. -- Crossed Cheque on Yokohama Specie Bank dated 27th April 1940 for Rs. 570 drawn by H. Hirji in favour of Bhairudan Sohon Lal and bearing the following endorsements; Bhairudan Sohon Lal, then Haranandan Singh Sharma. This: was collected through the Bank of Behar and credited to the Savings Bank of Haranandan.

(4) Ex. 14 -- Crossed Cheque on Allahabad Bank dated 5th May 1940 for Rs. 500 drawn by Kissen Chand Karam Chand in favour of Sohon Lal Mohon Lal or bearer

and bearing endorsements on back as follows -- Sohonlal Mohonlal, and then Haranandan Singh Sharma. It was collected through the Sayings Bank account of Haranandan with Bank of Behar.

(5) Ex. 12 -- Crossed draft on New Standard Bank dated 11th May 1940 for Rs. 700 drawn by New Standard Bank in favour of N.C. Atta with following endorsements on back -- N.C. Atta, then Sohon Lal Mohon Lal, and then, Haranandan Singh Sharma and collected through Bank of Behar and credited to the current account of Haranandan.

(6) Ex. 10 -- Crossed Cheque on the National City Bank of Hew York dated 16th May 1940 for Rs. 1558-11-0 drawn by Moujilal Pannalal in favour of Sohon Lal Mohon Lal with endorsements as follows -- Sohon Lal Mohon Lal, and then, Haranandan Singh Sharma and collected as the last preceding cheque.

(7) Ex. 13. -- Uncrossed Cheque on Allahabad Bank dated 26th May 1940 for Rs. 531-14-0 drawn by Manick Chand Bhuar Lal in favour of Sohon Lal Mohon Lal or bearer and endorsed as follows -- Sohon Lal Mohon Lal, and then, Harnandan Singh Sharma and collected as last one.

(8) Ex. 4. -- Crossed Cheque on Central Bank dated 15th June 1940 for Rs. 956-3-6 drawn by Panchanan Das Kanai Lal Das in favour of Chunilal Anchalia and endorsed as follows -- Chunilal Anchalia, then, Uttam Chand Chuni Lal and collected as last one.

5. It is admitted by the prosecution that the endorsement "Sohonlal Mohonlal" appearing on the back of the first cheque (Ex. 6) is the genuine (signature of that firm. It has been stated in evidence that the endorsements purporting to be that of Sohon Lal Mohon Lal appearing on the 2nd, 4th, 5th, 6th and 7th cheques (Ex. 1, 14, 12, 10 and 13) are not the genuine signatures of the firm. It will be observed that there is nothing on the face of 3rd and 8th cheques (Ex. 2 and 4) showing that they belonged to Sohon Lal Mohon Lal. It will be further observed that 7th cheque (Ex. 13) was an uncrossed cheque payable to bearer and need not have been falsely endorsed on the back in the name of Sohonlal Mohanlal or collected through any bank at all. Having stated the prosecution case and the particulars of the eight cheques, I now pass on to the defence, as disclosed in the cross-examination and in the two separate written statements filed on behalf of the two appellants.

6. Haranandan in his written statement denied that he used to visit the complainant's firm or that Lal Chand used to live with him or that the latter was a member of the musical club at No. 81, Burtola Street. He said he received five cheques (EXS. 1, 10, 13 and 14) in the course of business from Lal Chand who assured him that he, Lal Chand, had received them for his dues from Sohon Lal Mohon Lal of which he was a member and that similarly in the course of business Lal Chand gave him the cheque of Bhairudan Sohonlal (Ex. 2) and the cheque of Uttam Chand Chunilal (Ex. 4) and that he (Haranandan) had no knowledge that those cheques belonged to Sohonlal Mohonlal. He asserted that he had no

knowledge or reason to believe that the cheques had been obtained illegally or the endorsements were forged and that he in good faith sent them to his bank. He concluded by saying that he owed nothing to Lal Chand now as the latter had obtained full consideration for the cheques. He took a point of want of jurisdiction which, however, has not been pressed before us. Keshabdeo in his written statement stated that he was one of the directors of Ranadhir Kumar Singh & Co. Ltd., which is a private company and that Ranadhir Kumar Singh was another director. He denied that he had any friendship with Lal Chand or that he ever went to the complainant's firm to meet Lal Chand. He said that Haranandan was a relation of his co-director and as such was known to him. The account of Lal Chand was opened in the Company's books through Haranandan. The cheque for Rs. 2000 (Ex. 6) was received in the ordinary course of business bearing the genuine signature of Sohon Lal Mohon Lal and of Lal Chand and was duly credited to Lal Chand and sent to the Company's Bankers for collection. He never had any knowledge or suspicion that the cheque had not been obtained by Lal Chand from Sohon Lal Mohon Lal in an honest and bona fide way. He or his firm had no pecuniary interest or gain in the transaction and the entire amount except ES. 15 had been paid back to Lal Chand on or before 13th May 1940. He concluded by saying that his company would never have dealt with the cheque (Ex. 6) had he, or anybody on behalf of the company, the least cause for suspicion as to the bona fide of Lal Chand.

7 As I have already stated the first charge against both the appellants was that of conspiracy. In the majority of cases of conspiracy one can hardly expect direct evidence to establish the charge. In such cases the guilt has to be inferred from facts and circumstances proved before the Court. It is well settled, however, that the relevant facts and circumstances must be of such a compelling nature as must necessarily lead the Judge or the jury, as the case may be, to a finding that the accused person must be guilty. In other words, the inference of guilt must be irresistible and wholly incompatible with innocence. In *Tarapada Mitra and Others Vs. Emperor*, cited by Mr. S.N. Bannerjee, Rankin C.J., observed at page 429 as follows:

One cannot help thinking that perhaps the association is more readily explained by the assumption of guilty knowledge and intention on the part of Ashoke than by the failure to make such an assumption. It may even be a reasonable view that it is somewhat more probable than not that Ashoke was a fellow conspirator with Abani. But the question before this Court is not that. The question is whether it is proved and for that purpose we have to remind ourselves that it is not enough that the prosecution theory is one theory which would explain the facts -- it has got to be shown that it is the only theory which in a reasonable sense is compatible with the facts.

8. The case in *Emperor v. Rahimutullah Hazi Karim* 70 C.L.J. 471 also relied upon by Mr. Banerjee adopts the same principle. Towards the end of his judgment the learned Magistrate observed as follows:

One thing which applies equally to Keshabdeo and Haranandan is that there is not the least doubt that these eight cheques belonging to Sohanlal Mohon Lal were misappropriated by Lal Chand and as such they were stolen properties, and when these two accused received the cheques they had dealt with stolen properties. Therefore u/s 114, Evidence Act (illust. a) the onus of proof that they did not know them to be stolen property was upon them.

9. It is apparent from his judgment that the ultimate decision of the learned Magistrate was greatly influenced by his above view on the question of onus of proof. It is therefore necessary to consider whether he was right.

Illustration (a) of Section 114, Evidence Act, runs as follows:

The Court may presume:

(a) 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.

10. It will be noticed that the expression used is " The Court may presume". For a true meaning of this expression we have to turn to Section 4 of the Act, the relevant portion of which is as follows:

Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

11. Thus it is quite clear that under illust. (a) of Section 114 there is a discretion in the Court. The Court is not obliged to make the presumption. Let us see how the principles underlying this illustration have been understood and applied by the Courts in concrete cases. The leading case on this point is the case in *Beg. v. Isaac Schama* (1914) 84 L.J.K.B. 396 where Lord Reading C.J. with the concurrence of Bray, Avory, Lush and Atkin JJ. laid down the principle as follows:

In a case, such as the present, where a charge is made against a person of receiving stolen goods well knowing the same to have been stolen, when the prosecution have proved that the person charged was in possession of the goods, and that they had been recently stolen, the jury should then be told that they may, not that they must, in the absence of any explanation which may reasonably be true, convict the prisoner. But if an explanation has been given by the accused, then it is for the jury to say whether upon the whole of the evidence they are satisfied that the prisoner is guilty. If the jury think that the explanation given may reasonably be true, although they are not convinced that it is true, the prisoner is entitled to be acquitted inasmuch as the Crown would then have failed to discharge the burden imposed on it by our law of satisfying the jury beyond reasonable doubt of the guilt of the prisoner. The onus of proof is never changed in these cases. It always remains on the prosecution. That is the law. In pronouncing it to be so, the Court is not giving forth any new statement of the law, but is merely restating it; and it is hoped that this restatement may be of

assistance to those who have to try these cases.

12. In *Hathim Mondal v. Emperor* ( AIR 1920 WB. 342 the accused persons altogether denied possession of the stolen goods. The question there was not one of accounting for possession of the stolen goods. In his charge to the jury the learned Sessions Judge who tried that case stated as follows:

When it is established that an accused is found in possession of stolen property, it is his business to show that he came by it honestly, and that he did not know that it was stolen property. Therefore (unless there appears strong reasons to the contrary) if the jury find that the accused was in possession of the property and that the property was stolen, they should presume that the possession of the accused was dishonest and that he had reason to believe that the property was stolen.

13. Sanderson C.J. ruled that the above direction was wrong and insufficient and set out in extenso the observations of Lord Reading C.J. part of which I have set out above and expressed the hope that that statement of the law may be of assistance to those who preside at the trial of such cases. The matter was again discussed in *Satya Charan Manna Vs. Emperor*, . In that case the accused persons had been charged under Sections 395 and 412. Shortly after the dacoity the houses of the accused had been searched. In the house of one accused was found a chimney which he stated had been purchased by him. In the house of the other accused was found a ring which that accused stated to be part of his marriage dowry. Apart from statements made to the above effect before the Committing Magistrate the accused persons did not adduce any substantive evidence. In explaining illust. (a) to Section 114 the Sessions Judge gave the jury the following directions:

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. When it is proved, or may be reasonably presumed, that the property in question is stolen property, the burden of proof is shifted and the possessor is bound to show that he came by it honestly and if he fails to do so the presumption is that he is the thief or the receiver according to circumstances. I have already referred to the defence of these two accused. If the gentlemen of the jury find that the accused have failed to account for their possession, then they may presume that the accused Jatta Bag has come by Ex. 11, chimney, dishonestly and that Satya Manna has come by Ex. 9, gold ring, dishonestly.

13. Referring to the above directions, Newbould and Mukherji JJ, expressed the following views:

The objections to this description of the law are firstly that before a presumption under this section can arise, it must be proved that the goods found in the possession of the accused have been stolen. No such presumption will arise in a case when it may reasonably be presumed that the property in question is stolen property. But the more serious objection is that the jury were told that the



burden of proof was shifted. In this connexion we may refer to the ease in *Hathim Mondal v. Emperor* AIR 1920 WB. 342 in which the learned Chief Justice pointed out 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. Reference was then made to the judgment of the Lord Chief Justice of England in *Beg. v. Isaac Schama* (1914) 84 L.J.K.B. 396 and the remarks there made are fully applicable to the present case. That the law in India is similar to the law in England in this case is clear from the words used in illustration to Section 114 "may be presumed" and from the definition of those words given in Section 4, Evidence Act. The error of the learned Sessions Judge is not confined to his remarks in this particular passage. Reading his charge as a whole, it is evident that it must have left an impression in the minds of the jury that if they found that these two articles were properly identified, as having been the properties which were stolen at the time of the dacoity, and were found in the appellant's possession, they were bound to presume the appellant's guilt. The jury were not properly directed that it was their duty to weigh all the circumstances of the case, consider the accused's explanation and then decide whether or not they should make such a presumption.

14. The case in *Kabatulla and Others Vs. King-Emperor*, is, indeed, helpful for the purpose of the present case. In this case also some of the stolen properties were found with the appellant. The relevant portion of the charge to the jury in that case is set out in extenso at p. 158. The Sessions Judge concluded this part of his Charge with the following words:

As to claim of the articles, allegation is not the same as proof. Of course, as stated above, unless the prosecution proves the properties to be stolen, there is no presumption. But if you make the presumption, it cannot be rebutted by mere denial.

15. After referring to the cases in *Beg. v. Isaac Schama* *Hathim Mondal v. Emperor* AIR 1920 WB. 342 and *Beg. v. Isaac Schama* (1914) 84 L.J.K.B. 396, *Suhrawardy and Panton JJ.* state at pp. 161, 162 as follows:

In a case where the evidence of the guilt of the accused rests upon discovery of stolen property in his possession and which is tried by the jury, the proper course is to direct that the jury are entitled to take the explanation offered by the accused of their possession. It is not necessary that such claim by the accused must be proved. There may be a case in which it is impossible for the person who is in possession of the property to prove how he obtained possession of it, and if he states the circumstances under which he obtained it, the jury as Court of fact may accept it, and in that case it will be their duty to acquit the accused. The statement of the law made by the learned Judge in his charge to the jury leaves no such option to the jury. He insists that if the prosecution succeeds in proving possession by the accused of recently stolen goods, it is his duty to prove his innocence, and he emphasises it by explaining that mere allegation is not proof and that the presumption raised under the law cannot be rebutted by

mere denial. We think that this explanation of the law is not correct and amounts to a misdirection which vitiates the charge. This view is in accord with that taken in *Satya Charan Manna Vs. Emperor*, .

16. In *Bhutnath Mondal Vs. Emperor*, the accused persons were charged u/s 411, Penal Code. Their defence was that the, 3 head of cattle in their possession which were alleged to have been stolen had been mortgaged to them. They did not advance any evidence nor did they even put their defence to the local witnesses. They simply made out their defence in their statement. S.K. Ghose J. observed as follows:

In his charge to the jury the learned Judge referred to the presumption u/s 114, Evidence Act, and there he remarks as follows:

In this case on account of the presumption the onus of proof is shifted to the accused whose duty it is to rebut it. If they fail to prove that they acquired the property lawfully, the jury must convict them as the presumption is that they knew the property had been unlawfully acquired.

The learned Judge was clearly wrong in giving this explanation of Section 114, Evidence Act. In the first place the presumption that may arise u/s 114 is discretionary with the Court, having due regard to the circumstances of the case. But the learned Judge apparently gave the jury to understand that they were bound to make that presumption. Further, the presumption is only this, that if a man is in possession of stolen goods soon after a theft the Court may presume that he is either the thief or has received the goods knowing them to be stolen unless he can account for his possession. This does not mean that the accused 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. The learned Judge went on to tell the jury that "the statement of the accused without proof cannot be accepted as true" and further that "before the story of the sale could be seriously considered it was the duty of the defence to ask local witnesses some things." There was no duty cast on the defence to prove the innocence of the accused and it was for the jury to decide whether the statement of the accused was true or not. Upon this charge the conviction cannot possibly be sustained.

17. Lord-Williams J. expressed himself in the words following:

"It must be clearly understood that in criminal trials the onus of proof never shifts to the accused and always rests upon the prosecution. In cases of goods which have been recently stolen the law exempts the Crown from proving the guilt of the accused unless he gives some explanation as to how he came by the goods. If he 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. That statement of law will be found in the cases in *Satya Charan Manna Vs. Emperor*, and *Beg. v. Isaac Schama* (1914) 84 L.J.K.B. 396.

18. The next case is that in *Daud Shaik v. Emperor* 40 C.W.N. 159 where the same principle has been laid down in relation to Section 114 Illust. (a) by Lort-Williams and Jack JJ. The last case I need refer to is the case in *Surendra Nath Ghosh v. Emperor* 40 C.W.N. 1090. In this case the accused persons claimed that the goods in question were theirs and were not the things stolen in the dacoity. In this case one of the accused persons did not even say in his statement that the ring was his. Jack J. with the concurrence of Lort-Williams J. laid down the law as follows:

The learned Judge told the jury that Baidyanath in his statement did not account for his possession of the ring. But on reference to his statement we find that he was merely asked:

Was this gold ring, Ex. 12, on your finger? to which he replied.

"Yes, it was."

Later on, he was asked whether he would say anything else and he then mentioned that he was down with fever about three weeks before the dacoity and after recovering from the fever, he was ailing with a pain on his head. But he made no further remarks about the ring, so that no presumption can be raised against him on the ground that he failed to account for the possession of the ring, because it is not necessarily correct to say that he could not account for its possession. He was not asked to account for his possession of this ring, and to enable the prosecution to draw the presumption u/s 114, Evidence Act, he ought to have been asked to account for his possession.

With regard to the other accused Jack J. stated as follows:

In dealing with the case of Charubala, the learned Judge said:

If you believe that those ornaments were really lost during this dacoity and were found in the possession of Charubala as alleged at the time, then you can presume, if you do not believe the statement of Charubala that Charubala is either a dacoit herself or that she received and retained possession of those ornaments with guilty knowledge that those properties were stolen during the commission of a dacoity.

Now this is a misdirection. The proper direction would have been that if they did not think that the account given by Charubala of her possession of these things might reasonably be true, in that case only were they entitled to make the presumption u/s 114, Evidence Act, because even if they were not inclined to believe the statement of Charu, but still thought that the statement might reasonably be true, they were not entitled to make the presumption against her.

19. I am bound to say, with great respect to the learned Judges, that I should hesitate to to as far as they have gone in this case. Mr. Bannerjee cited the cases in *Major Robert Stuart Wauchope Vs. Emperor*, *Bolaichandra v. Bishnu Bejoy* AIR 1934 WB. 423 and AIR 1933 218 (Privy Council) . All these cases also clearly

establish the general proposition, that in criminal cases the onus remains always on the prosecution to prove its case in its entirety and it does not change merely because the prosecution has succeeded in proving a part of its case. As those cases do not specifically relate to the construction of Section 114 illust. (a) I do not refer to them in any greater detail. In the above discussion I have advisedly confined myself to the decisions of this Court and avoided introducing the somewhat divergent views of the other High Courts, for, in my opinion, our subordinate Courts should follow the rule now established by a uniform course of judicial decisions of this Court which I have cited above. To summarise then, the following propositions may be deduced from the cases I have discussed above:

General -- (1) That in a criminal case the onus of proving the main issue is always on the prosecution and it never shifts on to the accused.

Conspiracy -- (2) That in a case of conspiracy, it is not enough that the prosecution theory is one theory which will explain the facts but it has got to be shown that it is the only theory which in a reasonable sense is compatible with the facts.

Evidence Act, Section 114 illust. (a) -- (3) That under illustration (a) to Section 114, Evidence Act, the Court may but is not obliged to make the presumption therein mentioned.

(4) That even if the Court make the presumption under illust. (a) to Section 114, Evidence Act, the onus on the general issue is still on the prosecution.

(5) 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.

(6) That 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.

(7) That 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.

24. (8) That the accused need not even give any explanation unless he is asked to account for his possession (query?).

20. In the light of the above principles I am clearly of opinion that the observations of the learned Magistrate with regard to onus of proof in this case were entirely erroneous. Mr. Bannerjee referred us to Clause (a) of Section 118, Negotiable Instruments Act, but he obviously overlooked Clause (g) and the proviso thereto. If Lalchand obtained the cheques by means of an offence, persons claiming under him cannot claim any presumption in their favour under that Act. Keeping the above principles in mind I proceed to examine and consider the evidence on which the prosecution claims to have discharged the onus that is

on it and on which the learned Magistrate found the appellants guilty of the conspiracy and the other crimes with which they were charged. [After discussing the evidence in the case and the different hypotheses which would fit in with the proved facts, his Lordship allowed the appeals and set aside the conviction and sentence on both the appellants.]

Lodge, J.

21. I agree.