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SATNARAIN SAO

v.

THE STATE OF BIHAR

April 18, 1972

[A. N. GROVER AND M. H. BEG, JJ.]

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Indian Penal Code s. 411 *and Evidence Act s.* 144(*a*)—*Stolen property found in the possession of accused shortly after theft—Accused's explanation must be found to be reasonably true to displace presumption against him under s.* 144 *Illustration* (*a*) *Evidence Act.*

A Sen-Raleigh cycle which was stolen by one S was recovered from the house of the appellant along with several other cycles. The appel-
C lant's explanation was that some of the cycles belonged to members of his family and the others were pledged with him in the course of his business. Ext. DA was produced oy the appellant to show that the Sen-Raleigh cycle in question had been pledged with him by S. The Trial Court did not accept the document as genuine, rejected his explanation as to how the said cycle came into his possession and convicted him under s. 411 I.P.C. The conviction was upheld by the High Court Dismissing the appeal, this Court,

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HELD: The appellant had sought to prove the document ext. DA to support the transaction of pledge. That document had rightly been found not to have been proved. Apart from the Sen-Raleigh cycle several other cycles were found in the possession of the appellant which he claimed to have been pledged with him. No article of any other kind was either pointed out or claimed to have been pledged with the appellant or with members of his family which would normally
E have been done if the version given by him that the business of pawn brokers was being carried on had any truth in it. Pawn-brokers are ordinarily and in normal course expected to maintain some books of account or some documents which contain the particulars of the transactions relating to pledge. There was no indication or suggestion by the appellant that he was maintaining any such books of account or documents. [211F]

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The above circumstances were sufficient to show that the court would be justified in holding that the explanation given by the appellant could not reasonably be true. A presumption therefore could immediately be drawn in accordance with s. 114. Illustration (a) of the Evidence Act. There was hardly any evidence worth the name by which it could be said that the presumption had been rebutted by the appellant. [211H]

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The appeal must accordingly be dismissed.

Atwal v. *Massey*, [1971] 3 All. E.R. 881; *Otto George Gfeller* v. *The King*, [1943] P.C. 211 and *Rex* v. *Abramovitch*, [1914] 84 L.J. (K.B.) 391. referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 67 of 1968.

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Appeal by special leave from the judgment and order dated January 18, 1968 of the Patna High Court in Criminal Appeal No. 407 of 1966.

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S. C. Agarwala and *V. J. Francis*, for the appellant.

B. P. Jha, for the respondent.

The Judgment of the Court was delivered by

Grover, J. This is an appeal by special leave from a judgment of the Patna High Court upholding the conviction of the appellant under s. 411 of the Indian Penal Code for which a sentence of three years' rigorous imprisonment was imposed. B

According to the case of the prosecution a Sen-Raleigh cycle was stolen from the possession of Sheo Charan Lal. He reported the matter to the Police on March 25, 1965. It appears that on May 11, 1965 the Station House Officer, Incharge Giridih Police Station A.D.N. Sinha learnt while he was moving about in the town on the Moharram day that a thief was running away with a cycle. The alleged thief was apprehended and the cycle in his possession was taken into custody. The name of that person was Mohnd. Siddique. He made a statement to the police officer which led him to search the premises of the appellant. As a result of the search seven cycles including the Sen-Raleigh cycle belonging to Sheo Charan Lal which was stolen on March 24, 1965 and three other cycles were recovered from the house of the appellant. Mohd. Siddique and the appellant were tried, the former under s. 379 and the latter under s. 411 of the Indian Penal Code. Siddique was convicted and sentenced but he did not file any appeal. C D E

It was not disputed before the High Court that the Sen-Raleigh cycle was recovered along with nine other cycles as a result of the search of the house of the appellant by A.D.N. Sinha the S.H.O., on May 11, 1965. It was also proved that that cycle was stolen. The explanation given by the appellant was that three out of the 10 cycles belonged to the members of his family and the other seven had been pledged with him as he carried on the business of a pawn broker. The Sen-Raleigh cycle had been pledged by Siddique with him and that is how the said cycle was recovered from his possession. P.W. 1 Jayantilal and P.W. 2 Shyam Narain Singh deposed that the appellant as well as his brothers and other members of his family lived in the same house. It was further stated by them that the appellant and his brothers worked as contractors and they also took things on pawn and advanced money. According to Shyam Narain Singh he had seen ornaments and utensils being taken on pledge by the appellant and members of his family although he had not seen him taking any cycle on pledge. The appellant also produced a document Exh.DA which was scribed by one Baldev Pandit and had been attested by some witnesses. In this document it was stand that Rs. 80 had been received by Siddique by way of advance from the appellant and F G H

A that the cycle in question had been pledged with the latter. Neither the scribe nor Mahabir Sao or Nanden who were the attesting witnesses gave evidence. D.W. I Ramjit Sao a neighbour deposed that the document Exh.A had been scribed in his presence and that Rs. 80/- had been paid to Siddique. Siddique had pawned the cycle by way of security for the advance. The courts below
B found that this document had been manufactured for the purpose of the case implying thereby that it was not genuine. The appellant does not appear to have produced any evidence about the pledging of the other cycles which were found in his possession nor did he point to any other article apart from the cycles which had been pledged with him in the course of his business when the
C search was made of his house by the S.H.O. A. D. N. Sinha.

The High Court, apart from other facts, took the following matters into considerationn while upholding the conviction of the appellant :

(1) Although two defence witnesses had been examined by
D the appellant there was nothing to show that he had taken the ordinary precaution of making proper enquiries about the ownership of the cycle before advancing any loan on its security.

(2) It was significant that the document Exh. A was quite silent as to the source from where Siddique had got that cycle and when he had acquired it.

E (3) These facts showed that the transaction could not have been a *bona fide* transaction by the person carrying on *bona fide* business of advancing loans on pledge.

(4) The Investigating Officer had deposed to the fact that after the recovery of 10 cycles he made a verification from the records of the police station and found that besides the Sen-
F Raleigh cycle cases had been instituted earlier with respect to four more cycles out of the recovered cycles.

(5) Even if it be assumed that this evidence was not admissible according to the charge as framed with regard to two cycles the same had been recovered from the place of the appellant which had been admitted by Siddique as having been stolen by him.

G (6) There could be no doubt that at least two of the 10 cycles recovered from the possession of the appellant were stolen properties.

(7) Considering the above aspect as well as the fact that the conduct of the appellant in connection with the taking possession
H of the cycle in question from Siddique was not at all consistent with the conduct of a man of ordinary prudence it was not possible to accept the appellant's contention that he had taken possession of the cycle without knowledge or belief that it was stolen.

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Learned counsel for the appellant has subjected the above reasons given by the High Court for sustaining the conviction to criticism on several grounds. It has been firstly pointed out that admittedly the trial was confined to the alleged theft of the Sen-Raleigh cycle and its having been received by the appellant in circumstances which made him guilty of an offence under s. 411 of the Indian Penal Code; the prosecution relating to the other cycles should not have been taken into account. It has next been urged that the whole approach with regard to the appellant not having made *bona fide* enquiry from Siddique before accepting the Sen-Raleigh cycle in pledge was unsustainable in law. We may in this connection refer to a judgment of Lord Widgery C.J. in *Atwal* v. *Massey*(1) in which it was laid down that in order to establish an offence under s. 22 of the (English) Theft Act 1968 which is similar in terms to s. 411 of the Indian Penal Code, it was not sufficient to show that the goods had been received in circumstances which would have put a reasonable man on enquiry; the question was a subjective one; was the appellant aware of the theft or did he believe the goods to be stolen or did he, suspecting the goods to be stolen, deliberately shut his eyes to the circumstances ? The next submission on behalf of the appellant is that the correct ambit and scope of the presumption which can be drawn under s. 114, illustration (a) of the Evidence Act was not considered by the High Court or the courts below.

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Section 114 provides that the court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. Illustration (a) is as follows : that a person who is in possession of stolen property soon after the theft is either the thief or has received the goods knowing that to be stolen unless he can account for his possession. In *Otto George Gfeller* v. *The King*(2) the law as enunciated in *Rex* v. *Abramovitch*(3) was accepted as representing the correct statement on the subject of the presumption to be drawn in such cases. That was in the following terms :

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> "Upon the prosecution establishing that the accused were in possession of goods recently stolen they may in the absence of any explanation by the accused of the way in which the goods came into their possession which might reasonably be true find them guilty, but that if an explanation were given which the jury think might reasonably be true, and which is consistent with innocence although they were not convinced of its truth the

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(1) [1971] 3 All. E.R. 881.
(2) [1943] P.C. 211.
(3) [1914] 84 L.J. [K.B.] 391.

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> prisoners were entitled to be acquitted inasmuch as the prosecution would have failed to discharge the duty cast upon it of satisfying the jury beyond reasonable doubt of the guilt of the accused".

It has been urged before us that the appellant had given an explanation of how he came into possession of the Sen-Raleigh cycle, B his explanation being that it had been pledged with him by Siddique in the ordinary course of business which he was carrying on and that explanation had been sought to be supported by evidence. The two prosecution witnesses had testified that the appellant and other members of his family were carrying on the business of pawn brokers apart from other avocations which they C were following. It is emphasised that according to the above statement of law even if the courts were not convinced of the truth of the explanation but if the same could be held to be reasonably true the prosecution must be considered to have failed to discharge the duty cast upon it of satisfying the court beyond reasonable doubt of the guilt of the appellant.

D The question that the courts, therefore, had to decide was whether the explanation given by the appellant in view of the admission that the Sen-Raleigh cycle was stolen property could be held to fall within the above rule, namely, whether it might reasonably be true even though the courts were not convinced of its truth. Since the courts below and the High Court have taken some irrelevant and inadmissible matters into consideration E we have examined with care the explanation given by the appellant in the light of the entire facts and we are unable to come to the conclusion that the explanation could be regarded such as might reasonably be true. The first and the most important fact is that the appellant had sought to prove the document ext.DA to support the transaction of pledge. That document had F rightly been found not to have been proved. Apart from the Sen-Raleigh cycle several other cycles were found in the possession of the appellant which he claimed to have been pledged with him. No articles of any other kind were either pointed out or claimed to have been pledged with the appellant or with members of his family which would normally have been done if the G version given by him that the business of pawn brokers was being carried on had any truth in it. Pawn-brokers are ordinarily and in normal course expected to maintain some books of account or some documents which contain the particulars of the transactions relating to pledge. There was no indicatlon or suggestion by the appellant that he was maintaining any such books of account H or documents.

The above circumstances, in our opinion, were sufficient to show that the court would be justified in holding that the explanation given by the appellant could not reasonably be true. A

presumption, therefore, could immediately be drawn in accordance with s. 114, Illustration (a) of the Evidence Act. There was hardly any evidence worth the name by which it could be said that the presumption had been rebutted by the appellant.

In the result the conviction and the sentence of the appellant are maintained and the appeal is dismissed. He was released on bail; he shall surrender to the bailbonds.

G.C. *Appeal dismissed.*