PETITIONER:
KARNAL SINGH UTTAM SINGH

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT19/11/1975

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
GOSWAMI, P.K.

CITATION:
1976 AIR 1097 1976 SCR (3) 747
1976 SCC (1) 882

ACT:
Indian Evidence Act Section 114-Presumption from recent possession of stolen property - Nature of.
Criminal Procedure Code, 1898 section 342-When explanation given by the accused under s. 342 is quite reasonable and credible and supported by other evidence in defence, Conviction and sentence under s. 411 of the lndian Penal Code is not sustainable.

HEADNOTE:
On 4-3-1968, the date of the accident. Karnal Singh, the accused was driving the truck No. MRS 7372. purchased out of the loan advanced by the ex-serviceman Co-operative Society to one Sutar who entrusted the vehicle to Balwant Singh, the brother of the appellant, a co-accused, under a contract for hire against a monthly payment of Rs. 2000-2200, after incurring all expenses over the truck. The payment was regular up to December, 1967, and, thereafter, Balwant Singh avoided Sutar. Though Balwant Singh met Sutar on 9-3 1968 and 12-3-1968 ie. after the date of accident and promised to meet him later, The actually absconded resulting in the lodging of a First Information Report by Sutar on 20-4-1968 at 12.30 p.m. against Balwant Singh Uttam Singh for taking appropriate action under s. 408, I.P.C.
Since Balwant Singh was absconding and the vehicle was found in the possession of Karnal Singh, the police apprehended him and filed the charge sheet. The Presidency Magistrate, 6th Court, Mazagaon, Bombay, charged the appellant under s. 408 read with s. 114 of the Indian Penal Code, but, actually convicted him and sentenced him to six months R.I. and a fine of Rs. 500/- under s. 411 Indian Penal Code without appreciating the effect of either the value of Exhibit Dl dated 12-3-1968 written by Sutar indicating that he was agreeable to pay the total costs of the repair of the damaged vehicle, with the admission of its execution by Sutar in cross-examination and failure to explain these or of the explanation given by the accused in his 342 statement to how he came into possession of the lorry for repairing it.
The High Court mainfained the conviction and the sentence. Allowing the appeal by special leave, the Court, F
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HELD. (1) the presumption from recent possession of stolen property is an optional Prescription of fact under s. 114 of the Indian Evidence Act. It is open to the Court to convict the appellant by using the presumption when the circumstances indicate that no other reasonable hypothesis except the guilty knowledge of the appellant is open to the prosecution. [751-D]

(2) In the instant case, there was no mention of the appellant's name in the F.I.R. there was no change under s 411, I.P.C. against him and he was not asked to explain it possession of the truck, but still he did explain it. The appellant's answer to the omnibus question under s. 342, Criminal Procedure Code, without giving him an intimation of the offence of which he was likely to be convicted, on the face of it, was quite reasonable and credible. The prosecution had been unable to repel the effect of this fairly acceptable explanation. The explanation which the appellant had given was good enough to raise serious doubts about the susceptibility of a charge under s. 411, Indian Penal Code. The principle of benefit of doubt on questions of fact applies whether the verdict is of a Jury or the finding is to be given by a Judge or a Magistrate.[751,AB.E H]

Otto George Gfeller v. The king, AIR 1943 PC 211 @ 214

JUDGMENT:

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal N4. 133 of 1971.

Appeal by special leave from the judgment and order dated the 15-2-1971 of the Borrrbay High Court in Criminal Appeal No. 1354 (lf 1 969.

S. K. Gambhir and 5. M. Sikka for the appellant.

M. C. Bhandare and M. N. Shroff for Respondent.

The Judgment of the Court was delivered by

BEG, J. The appellant before us by special leave was charged as follows by the Presidency Magistrate of Bombay:

"I.B. P. Saptarshi, Presidency Magistrate 6th Court,

Mazaagaon, Bombay, do hereby charge you:

Karnal Singh S/o Uttam Singh as follows:

"That you on or about the 20th day of February, 1968 at Bombay along with one Balwant Singh s/o Uttam Singh who has absconded, at 171, Kazi Sayyed Street, being entrusted with certain property to wit M/Lorry No. 7372 valued at Rs. 52,000/- belonging to the complainant Shankar Dhondiba Sutar as driver committed criminal breach of trust in respect of the said property and aided and abetted to the absconding accused in commission of the said offence and thereby committed an offence punishable under Sec. 408 r.w. 114 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried by me on the said charge".

The prosecution evidence in the case was: one Shankar Dhondiba Sutar a member of the Ex-Servicemen Transport Cooperative Society Ltd., Bombay, had purchased the Truck No. MRS 7372 after taking a loan of Rs. 50,000/- from the Society out of which he had paid up Rs. 43,000/-. He had entrusted Balwant Singh Uttam Singh, the brother of the appellant, with the truck. He had a contract with Balwant Singh Uttam Singh under which he used to get a net income of

Rs. 2000/- to Rs. 2200/- p.m. from Balwantsingh Uttamsingh who was running the truck and seemed to be incurring all necessary expenses of it. This amount was paid regularly upto December, 1967. Thereafter, Balwantsingh Uttamsingh, the driver, avoided meeting the purchaser of the truck and was said to be absconding. On 4-3-1968, the truck met with an accident and Balwantsingh Uttamsingh is said to have sent information of it to S. D. Sutar. On 9-3-1968, according to Sutar, Balwantsingh him self went to Sutar. And, when the owner asked him to take him to the truck, it is alleged that he did not comply with this request.

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As Shankar Dhondiba Sutar had not paid up the whole amount due for the truck which he had borrowed from the Society, the owner of the truck, as entered in the Insurance papers, was the Society itself. S. D. Sutar stated that he found the truck at Thana Katha where he also found the appellant before us, Karnalsingh Uttamsingh, who had been, apparently, driving the truck. The First Information Report was lodged on 20-4-1968 at 12.30 p.m. by S. D. Sutar. It is against Balwantsingh Uttamsingh and makes no allegations against the present appellant. It is said that Balwant Singh Uttarnsingh had met S. D. Sutar again on 12-3-1968 and told him that he would turn up again. Vazir Singh Gaya Singh, PW 2, the Secretary of the Bombay Ex-Servicemen Transport Co. deposed that S. D. Sutar was a shareholder in the Company and proved the terms of his contract with Balwantsingh. He also made no complaint whatsoever against the present appellant. All that he said was that the truck was seen near Kashali Bridge and the present accused was its driver. Sub Inspector Ramesh Damodar, PW 3, stated that, on 13-5-1968, Vazir Singh, PW 2, and a police constable brought the truck to Pydhonie Police Station and that it was being driven by the present appellant at that time. This is all the evidence against the appellant.

The only question that the appellant was asked by the learned Magistrate under Section 342 Criminal Procedure Code and the appellant's reply are:

> "Q. What do you wish to say with reference to the evidence given and recorded against you?
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> A. I do not know whether M/Lorry No. MRS 7372 was handed over to the complainant on sale-purchase agreement and that the complainant had paid Rs. 43,000/ towards the instalment. I do not know whether the price was fixed at Rs. 50,000/-. Balwant Singh is my brother but I do not know if the complainant had given lorry in his possession in his capacity as a driver. I do not know whether Balwant Singh left with M/Lorry in Dec. 1967. I do not know anything about Balwant Singh not meeting the complainant thereafter. Mangal Singh told me that this lorry had met with an accident and that I should invest the amount over repair, and after the amount is recovered from the plying of the lorry, the lorry would be returned to him. It is true that Vazir Singh and one P.C. had told me to take the lorry at the Pydhonie Police Stn. I was the driver on the said vehicle at that time. I do not know where is my brother at present. He meets me at times. I have not spoken to him about the case. I want to lead defence witness".

He led some evidence in defence. Mangaldas Purshottam, D.W. 1, stated that,one Kartar Singh the driver of the truck had sent him a Trunk Call from Jalan that the truck in question had met with an accident on 4-3-1968 and that he gave this message to S. D. Sutar. As the accident was serious and the damage was considerable

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S. D. Sutar was unable to meet with the money required to repair it. According to Vazir Singh, PW 2, the claim against Insurance Co. was of Rs.,11000/-. According to Mangaldas, DW 1, the complainant had agreed that the appellant should repair the truck and deduct its expenses out of the income he could make from plying the truck on hire. He proved Exhibit 1 dated 12-3-1968 containing a writing, signed by S. D. Sutar. It has been translated as follows:

"Ext.'1'
Dated 12-3-1968.

National India Roadways,

"I, shankar Dhondiba give you in writing today that my Lorry No. MRS-7372 which had met with an accident, I am bound to pay total costs whatever comes to of its reparation".

Sd./-
Shankar Dhondiba Sutar".

This was put to S. D. Sutar in cross-examination. He admitted his signature under the writing and gave no explanation about it. It is significant that it was executed on the very day on which, according to an admission of S. D. Sutar, Balwant Singh also saw S. D. Sutar. Perhaps the defence has also yet come out with the whole truth. It is, however, quite inconceivable that S. D. Sutar would be completely unconcerned as to what had happen to the truck if he had not entrusted it to somebody other than Balwantsingh Uttamsingh for repairs to it. The matter seems to have been report ed to the police only as a result of some quarrel or differences between parties. Moreover, nobody would repair the truck without being paid for it. The explanation given by the appellant was, on the face of it, quite reasonable and credible. It was not merely supported by Mangaldas Purshottarn, D.W.l, whose cross-examination did not elicit anything to show that he was unreliable but also, indirectly, by Ashok Jugannath, DW2, the Superintendent of the Commonwealth Insurance Co. 'who proved the bills supplied to the Company on the strength of which the Insurance Co. had paid Rs. 6078.35.

It was, therefore, clear that somebody had got the truck repaired and realised the amounts to be paid for repairs from the Insurance Company. The beneficiary of the contract of insurance was the Bombay Ex-Servicemen Transport Co. of which S. D. Sutar was a member. Apparently, the amount had been realised by somebody on behalf of this Company. The bills could have been given by the
appellant. In the absence of any proof as to who else could have or had repaired the truck the version of the appellant could not be said to be quite unbelievable.
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A remarkable part of the case is that the Trying Magistrate had A convicted the appellant under Section 411 Indian Penal Code and sentenced him to six months rigorous imprisonment and to pay a fine of Rs., 500/- when he was not even charged with this offence., The High Court had maintained this conviction and the sentence and had not even mentioned the defects in the trial. There was neither a charge under Section 411 I.P.C. nor was the appellant asked to explain his Possession of the truck although he did account for it. The appellant's explanation appeared quite plausible. It may have been difficult to hold that the appellant could not have been prejudiced by the omission to frame a charge or by the manner in which he was put one omnibus question under Section 342 Criminal Procedure Code without giving him an intimation of the offence of which he

was likely to be convicted, if these questions had been seriously raised. However, as these questions do not appear to have been argued in the High Court and were'not even raised in the grounds of appeal in this Court, we will not consider them further. We think that this appeal is bound to succeed on the view of the facts we have taken above. The presumption from recent possession of stolen property is an optional presumption of fact under Section 114 Indian Evidence Act. It is open to the Court to convict an appellant by using the presumption where the circumstances indicate that no other reasonable hypothesis except the guilty knowledge of the appellant is open to the prosecution. In the case before us, the appellant had given a fairly acceptable explanations. The prosecution had been unable to repel the effect of it. The owner of the truck, S. D. Sutar, had made admissions which indicated that the prosecution case of an unlawful possession on the part of the appellant was not likely. It is more likely that the appellant had been entrusted with the truck in order that he might repair it and realise the costs. However, we express no opinion on this aspect of the matter as the sentence of such a contract may involve a civil liability. All we need say is that the explanation which the appellant had given was good enough to raise serious doubts about the sustainability of a charge under Section 411 Indian Penal Code on the strength of what was laid down in Otto George Gfeller v. The King(1), the appellant was entitled to an acquittal. It was held there (at p. 215):

> "The appellant did not have to prove his story but if his story broke down the jury might convict. In other words, the jury might think that the explanation given was one which could not reasonably be true, attributing a reticence or an incuriosity or a guilelessness to the appellant beyond anything that could fairly be supposed".

In that case, the question had to go before the Jury and the charge was found to be defective. The principle of benefit of doubt, on questions of fact, applies whether the verdict is of a Jury or the finding is to be given by a Judge or a Magistrate. The principle laid down in Gfeller's case (supra) (at p. 214) was:

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> ".. that 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 right reasonably be true, and which is consistent with innocence although they were not convinced of its truth the 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"

Consequently, we allow this appeal and set aside the conviction and sentence of the appellant. His bail bonds are discharged.

S.R. Appeal allowed.

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