

UGANDA / JUDGMENT

Rex v Mohamed (Cr. App No. 77/1938) [1938] EACA 199 (1 January 1938)

[1938] EACA 199

COURT

East African Court of Appeal

BEFORE

Lane, Ag. J, Thacker J

CASE / FILE NUMBER

Cr. App No. 77/1938

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APPELLATE CRIMINAL.**BEFORE THACKER, J. AND LANE, Ag. J.****REX, Respondent (Original Prosecutor)****ADAM NOOR MOHAMED, Appellant (Original Accused) Cr. App No. 77/1938**

Receiving stolen property—Evidence of receiving and guilty knowledge-Presumption of fact against accused-Onus on him to account satisfactorily for possession.

Held \$(27-4-38)\$.—That in a charge of receiving a thief is a competent witness and a conviction may be based on his evidence if confirmed.

- (2) That the onus of proof always remains upon the prosecution.
- (3) But that on proof of possession by the accused of goods recently stolen, there is a presumption of fact against the accused and an onus is placed upon him to account satisfactorily for his possession.
- (4) That guilty knowledge may be inferred from circumstances attending the receiving.

Schwartz for appellant.

Dennison, Crown Counsel, for the Crown.

JUDGMENT.—In this case the magistrate convicted the accused of being in possession of stolen coffee knowing or having reason to believe it to be stolen *contra* section 295 (1) Penal Code.

The grounds of appeal here are that the decision of the learned magistrate was wrong because there was no evidence of receiving and no evidence of guilty knowledge on the part of the appellant.

Mr. Schwartze's argument is based on the dictum in *Regina v. Pratt* (176 E. R. 580), that the mere fact that stolen goods were found on the accused's premises is not sufficient to confirm the evidence of the thief so far as to make it proper to convict. In that case there was no confirmation of the thief's evidence, which established the theft, possession and guilty knowledge. *Regina v. Pratt* (supra) was decided under the Larceny Act 1861. Section 295 of the Penal Code is substantially the same as section 411 Indian Penal Code and differs from the Larceny Act 1861. Consequently *Regina v. Pratt* does not bind us. In the present case apart from the thief's evidence, which the magistrate rightly regarded as unworthy of credence \$per\$ se except as to part of it, the prosecution proved that the coffee was stolen, that it was in the appellant's possession and that there were circumstances raising an inference that he had received it and retained it with guilty knowledge. There is no appeal against the magistrate's finding that the coffee was stolen, that it was shown to have come from Wispers Farm, and that it was in the appellant's possession without the leave or licence of the owner of that farm. The circumstances which were established as indicating that the appellant had received it and retained it with guilty knowledge were that:-

- (1) The appellant is a licenced coffee dealer and when asked by the Police Officer (an Inspector under the Coffee Industry Ordinance) to produce his register, he did not do so, as he was required to do by the Coffee Industry Ordinance and as he should have been able to do.
- (2) When asked if he had bought coffee from a native he denied it and said he had no coffee on the premises: When his premises were searched, three bags of coffee, identified as coming from Wispers Farm, were found at the back of the store. The appellant then said he had bought these from another dealer and produced an invoice relating to this alleged purchase which concerned certain coffee of "T" grade. This story was found to be untrue.

\$(3)\$. The coffee was wet, i.e. in a condition in which coffee does not normally change hands between dealers in a legitimate manner.

In cases of receiving, a thief is a competent witness and a conviction may be based upon his evidence if confirmed. The magistrate, while holding that the thief was not generally a witness of truth, accepted his evidence that he had sold the coffee to the appellant because this was confirmed by other evidence that the coffee came from this particular farm, the owner of which had not sold any coffee to the appellant, because it was found by the Police Officer in the appellant's possession and because the thief had pointed out the appellant as owner of the shop. The magistrate considered that the thief could only have known that it was in the appellant's possession because he had supplied it to the appellant. We think that he was entitled to accept this part of the thief's evidence, and, as he evidently did, to consider that it was confirmed. We think that he rightly rejected the possibility of the coffee being "planted" on the appellant. We think also that he was justified in holding that the possession was recent. The coffee had been

stolen in November or December and it was found in appellant's possession in January. He was entitled to say that coffee is not a commodity that readily changes hands.

The possession being established and the fact that it was purchased recently from the thief, a native, there is ample authority both in Indian and English decisions that there is a presumption of fact against the accused and an onus placed upon him to account satisfactorily for his possession.

In *R. v. Leone Sbarra* (13 Cr. App. R. 188) it was held that the circumstances in which property is received may in themselves be sufficient proof that it was stolen and that defendant knew that fact. The case while not precisely relevant to the question of onus, establishes that guilty knowledge may be inferred from circumstances attending the receiving.

In *Rex v. Kelson* (3 Cr. App. R. 230) it was held that on a trial for larceny there is a presumption of guilt against defendant who does not give evidence to explain his alleged connexion with the proceeds of the theft.

As regards *R. v. Schama* and *R. v. Abramovitz* (84 L. J. K. B. 396) (which was relied upon by the appellant) it was held as follows: That on an indictment for receiving the onus always remains upon the prosecution: the judge in directing the jury should tell them that upon the prosecution establishing that the person charged was in possession of goods recently stolen they might in the absence of any explanation by the accused of the way in which the goods came into his possession which might reasonably be true, convict; but

that if an explanation were given which the jury thought might reasonably be true although they were not convinced of its truth, the accused was entitled to acquittal inasmuch as the Crown would have failed to discharge the duty of satisfying the jury beyond reasonable doubt. On the test applied by this decision it appears to us that in the present case the prosecution accepted and discharged the onus upon it by proving the facts which have been enumerated. And that the only explanation given by the appellant (that given to the police) was rightly found by the magistrate, whose functions included that of a jury, to be false and unworthy of belief. Apart from this explanation the appellant gave none, as he gave no evidence in the Court below. In short the accused failed to discharge the onus.

Indian cases which may be mentioned as deciding that there is a presumption against the accused are *Poromeshur Aheer* (23 W. R. 16) and **Madeppa Thevan** (1888 1 Weir 471), also at p. 1013 of Ratanlal's Law of Crimes, 14th Edition, which is on all fours with this case.

We consider that the conviction was rightly had and we dismiss the appeal.

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