

IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION

Criminal Case No. 50/2022

BETWEEN: **STATE**

PROSECUTION

AND: **MOHAMMED AZAD**

ACCUSED

Counsel: PC 5006 Maryan for Police Prosecution
 Mr. M Yunus for the Accused

Date of Hearing: 24 June 2025
Date of Judgment: 3 October 2025

JUDGMENT

Introduction

1. Mr. Mohammed Azad ("the Accused") is charged with 1 count of Receiving Stolen Property contrary to section 306(1) of the Crimes Act 2009. The particulars of the offence are:

Statement of Offence

Receiving Stolen Property: *Contrary to Section 306(1) of the Crimes Act 2009.*

Particulars of Offence

Mohammed Azad between 14th day of June 2020 to 15th day of June 2020 at Navoli, Ba in the Western Division dishonestly received 1x Cow brand GAX valued at \$1,000.00 from ***Avinash Avishek Chand*** knowing it to be stolen, the property of ***Hirdesh Chand***.

2. The Accused pleaded Not Guilty to the above charge on 21 April 2022. After various adjournments, Trial was set for this matter on 24 June 2025.
3. On 24 June 2025, the date of Trial, Prosecution called 2 witnesses and thereafter concluded its case. The Learned Counsel for the Accused conceded that there was a case to answer and the Court found that a case was made out against the Accused to sufficiently require him to make a defence in respect of the charge. The procedure under section 179 of the Criminal Procedure Act was explained to the Accused. It was also explained to the Accused that he had a right to remain silent. The Accused chose to give evidence and not call any witnesses.
4. After the Accused gave evidence, Defence closed its case. Prosecution informed that they would rely on the Court record whilst the counsel for the Accused sought time to file Closing submissions. Closing submissions were then filed on 29 July 2025.
5. Having read the submissions and considered the evidence presented by Prosecution and Defence, I now pronounce my Judgment.

Burden of Proof

6. It is imperative to highlight that as a matter of law, the onus or burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no burden on an accused to prove his or her innocence as an accused is presumed to be innocent until proven guilty.
7. It is for the prosecution to prove the accused's guilt beyond a reasonable doubt. If there is doubt, so that the court is not sure of the accused's guilt, or if there be any hesitation in the court's mind on any of the ingredients or on the evidence led by prosecution, the accused must be found not guilty of the charges and accordingly acquitted.

Summary of Evidence

8. Hirdesh Chand ('Mr. Hirdesh') testified that between 14 June 2020 at about 4:30pm he went to tend to his bullocks which were drinking water a little further from his home. Mr. Hirdesh stated that on 14 June 2020, he had about 8-9 cattle and that he had tied them and went back home. He then explained that the next day at about 9am when he went to check them, he saw 1 missing. He stated that the cattle missing was white cow with the branding 'GAX' with a value of \$1,000.00. He then stated that he next saw his cow at the Police Station when it had been returned to him. A photograph of a cow was shown to Mr. Chand and he confirmed that it was his cow in the photograph. The photograph was marked as 'MFI 1'.
9. Avinash Chand ('Mr. Avinash') testified that on 14 June 2020, that he had asked the Accused for a horse and the Accused told him to give a cattle which he then got from Hirdai in Nadhari. Mr. Avinash further stated that the Accused had told him to go to Nadhari and that the cattle would be tied there and to just bring it and he could give Mr. Avinash a horse. Mr. Avinash then testified that he went with his neighbour, Ravneet and brought the cattle to Navoli, to the Accused. He then stated that on 15 June 2022 between 8am-9am, he went and gave the cattle to the Accused and that 3-4 days later the Accused gave him a male horse. When questioned if the Accused told him to get the cow for Hirdai, Mr. Avinash responded yes. When questioned if Hirdai had willingly given the cow to him, Mr. Avinash responded no. Mr. Avinash further agreed when questioned if he had informed the Accused that he had got the cow from Hirdai. Mr. Avinash then testified that he had been imprisoned for this incident of theft.
10. The Accused denies that he had told Mr. Avinash to get the cow from Hirdai but rather he testified that Mr. Avinash would always ask for a horse so the Accused told Mr. Avinash that his horse was a racing horse as such he was willing to exchange it for cattle. The Accused explained that Mr. Avinash told him that he did not have the money so he – the Accused told him to give a cow. The Accused testified that he did not know if Mr. Avinash had cattle or not but that Mr. Avinash had informed him that he would get cattle from someone else and give it to him – the Accused. The Accused further testified that on the morning of 15 June 2020 at about 8am, Mr. Avinash had come to his home accompanied with another boy and had brought a white cow which was branded but he could not recall the same. The Accused stated that Mr. Avinash had taken his horse 2-3 days before as he had informed the Accused that he had got a cow from someone and wanted to use the horse. The Accused further testified that he did not know that the cow was stolen.

Analysis of Evidence

11. The Court will need to evaluate the evidence by Prosecution whilst keeping in mind the evidence presented by the Accused insofar as they relate to the issue it is considering. The evidence presented by the parties will be evaluated to determine the testimonial

trustworthiness of the evidence which will be done by evaluating the credibility – the correctness or veracity of the evidence and the reliability of evidence – the accuracy of the evidence - vide State v Prasad Criminal Case No. HAC 72 of 2021 (20 June 2024). In doing this, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide State v Moroci Criminal Case No. HAC 161 of 2023 (26 April 2024)).

12. For a proper analysis of the evidence, it is imperative for the Court to turn its mind to the elements for the offence, which are:
 - i. the accused
 - ii. dishonestly receives stolen property
 - iii. knowing or believing the property to be stolen.
13. In the matter herein, Prosecution has preferred to charge the Accused on the basis that he knew the property to be stolen instead of the Accused believing the property to be stolen.
14. From the outset there is no issue with the identification of the Accused as the Accused agreed that Mr. Avinash had provided him with a cow on the morning of 15 June 2020. Rather the issue before the Court is whether the Accused dishonestly received the cow knowing it to be stolen property.
15. Further, it should be noted that the following documents were tendered by consent:
 - i. Search Warrant – PEX1
 - ii. Search List – PEX2
16. I will consider Prosecution's case whilst bearing in mind the Accused's evidence.
17. Mr. Hirdesh in his evidence stated that on 14 June 2020 at about 4:30pm he went to tend to his bullocks which were drinking water a little further from his home. He stated that at that time he had about 8-9 cattle. He then explained that the next day at about 9am when he went to check them and found that one was missing. Mr. Hirdesh explained that the cattle missing was a white cow with the branding 'GAX' with a value of \$1,000.00.
18. Mr. Avinash testified that on 14 June 2020, the Accused asked him to bring cattle to him and he would give Mr. Avinash a horse. However, he then later on stated in his evidence that he had actually asked the Accused for a horse and the Accused told him to give cattle. Mr. Avinash further stated that the Accused had told him to go to Nadhari and to bring the cattle from Hirdai which would be tied and to just bring and he could give Mr. Avinash a horse.
19. Mr Avinash stated that on 15 June 2022 between 8am-9am, he gave the cattle to the Accused and that 3-4 days later the Accused gave him a male horse. Mr. Avinash explained that the cattle he gave the Accused was a white cow but he hadn't paid any attention to whether it had any branding or not. When questioned if the Accused told him to get the cow for Hirdai, Mr. Avinash responded yes. When questioned if Hirdai had willingly given the cow to him, Mr. Avinash responded no. Mr. Avinash further agreed when questioned if he had informed the Accused that he had got the cow from Hirdai. Mr. Avinash then testified that he had been imprisoned for this incident of theft.
20. Section 306(3) of the Crimes Act deals property as being stolen if, and only if, it is original stolen property or it is previously received property or if it is tainted property. The Court is

- aware of section 306(5),(6) and (8) of the Crimes Act which defines original stolen property, previously received property or tainted property.
21. Mr. Hirdesh had stated that his white cow with the brand "GAX" had been stolen from him. When shown a photo, Mr. Hirdesh acknowledged that the cow in the photo was his. However, in cross examination Mr. Hirdesh agreed that the cow in photo did not have a brand because the photo was taken of the cow right side when the brand was on the cow's left side. This photograph was never tendered by Prosecution.
 22. Further, the cow that Mr. Avinash stated that he took from Hirdai in Nadhari was white but he could not confirm whether it had any branding or not. Prosecution failed to confirm if the cow Mr. Avinash took was Mr. Hirdesh's whose white cow was stolen. Prosecution even failed to have Mr. Avinash confirm by way of a photograph that the white cow he had taken from Hirdai in Nadhari was the same white cow with the branding 'GAX' that Mr. Hirdesh had testified had been stolen from him. Additionally, Prosecution failed to have Mr. Avinash confirm by way of photograph that the white cow he had stolen and that had been in his possession before being received by the Accused was the same white cow that had been stolen from Mr. Hirdesh.
 23. Thus, the Court is unable to ascertain whether the white cow appropriated by Mr. Avinash was the original stolen property which was appropriated in the course of theft from Mr. Hirdesh and that it was the same white cow that was in the possession or custody of Mr. Avinash who had appropriated it.
 24. Moreover, Mr. Avinash in his evidence had stated that he had wanted a horse from the Accused so in exchange for a horse, the Accused had told him to get the cow from Hirdai in Nadhari. When he was questioned if Hirdai had willing given him the cow, Mr. Avinash responded no. When questioned if he had informed the Accused that he had got the cow from Hirdai, Mr. Avinash stated yes.
 25. By virtue of the above, Prosecution is relying on the fault element that the Accused had knowledge that the cow was stolen property. In the case of R v Moys; [1984] EWCA Crim J0518-1 (18 May 1984) the Lord Chief Justice Lord Lane when dealing with what test is to be applied with respect to having knowledge or belief that goods were stolen stated:

"The question is a subjective one and it must be proved that the defendant was aware of the theft or that he believed the goods to be stolen. Suspicion that they were stolen, even coupled with the fact that he shut his eyes to the circumstances is not enough, although those matters may be taken into account by a jury when deciding whether or not the necessary knowledge or belief existed"

26. Further, in R v Hall; [1985]EWCA Crim J0311-4 (11 March 1985) Justice Boreham stated:

"We think that a jury should be directed along these lines. A man may be said to know that goods are stolen when he is told by someone with first hand knowledge (someone such as the thief or the burglar) that such is the case. Belief, of course, is something short of knowledge. It may be said to be the state of mind of a person who says to himself: "I cannot say I know for certain that these goods are stolen, but there can be no other reasonable conclusion in the light of all that I have heard and seen." Either of those two states of mind is enough to satisfy the words of the statute. The second is enough (that is, belief) even if the defendant says to himself: "despite all that I have seen and all that I have heard, I refuse to believe what my brain tells me is obvious". What is not enough, of course, is mere suspicion. "I suspect that these goods may be stolen, but it may be on the other hand that they are not." That state of mind, of course, does not fall within the words "knowing or believing".

27. Thus, as per Moys [supra] and Hall [supra] either an accused should have first hand knowledge from either the thief or the burglar that the goods are stolen or the accused believed the goods to be stolen with mere suspicion being not enough.
28. In the case herein, Mr. Avinash testified that the Accused had told him to get the cow from Hirdai and that Mr. Avinash had informed the Accused of the same. The Court notes that in Mr. Avinash's evidence that when he was questioned if Hirdai had given him the cow willingly, he responded no. However, Prosecution failed to question Mr. Avinash if he had informed the Accused that Hirdai had not given the cow willingly and/or that Mr. Avinash had taken the cow without Mr. Hirdai's permission. Thus, there was no direct evidence elicited by Prosecution that the Accused had known that Mr. Avinash had stolen the cow from Hirdai.
29. Turning to the Accused's evidence, he stated that Mr. Avinash would ask him for a horse and because Mr. Avinash did not have the money, he had told Mr. Avinash that he was willing to exchange his horse for a cow. The Accused maintained that he did not know if Mr. Avinash had cattle or not but that Mr. Avinash had informed him that he would get cattle from someone else and give it to him – the Accused.
30. On the morning of 15 June 2020 at about 8am, the Accused stated that Mr. Avinash had come to his home accompanied with another boy and had brought a cow. The Accused stated that he had asked Mr. Avinash where he had brought the cow from and was told that he had got it from someone.
31. The Court observed that Prosecution failed to show that the Accused had knowledge that Mr. Avinash had stolen the cow from Mr. Hirdesh. Prosecution was even unable to contradict the Accused's evidence in cross-examination when he had informed that he did not know Hirdesh/Hirdai. Further, Prosecution was unable to contradict the evidence of the Accused by showing that he knew that the cow that had been in the possession of the Mr. Avinash and then handed to him, was stolen.
32. Thus, considering the evidence in totality, the Court finds that Prosecution failed to satisfy beyond a reasonable doubt that the Accused dishonestly received a cow branded GAX valued at \$1,000.00 from Avinash Avishek Chand knowing it to be the stolen property of Hirdesh Chand.

Determination

33. I find that Prosecution has not discharged its burden in proving all the elements for Receiving Stolen Property beyond reasonable doubt.
34. I, therefore, find the Accused, Mohammed Azad, not guilty as charged for Receiving Stolen Property and hereby acquit him forthwith.
35. Any party aggrieved with the Court's decision has 28 days to appeal to the High Court.

