

# [The of the alternative expressions shows that](https://assignbuster.com/the-of-the-alternative-expressions-shows-that/)

The offender under this section must either dishonestly receive stolen property or he must dishonestly retain stolen property. While doing so he must either have knowledge that that property is a stolen property or he must have reason to believe that that property is a stolen property. The use of the alternative expressions shows that the prosecution must establish that the accused had dishonestly received stolen property, or if he did not receive the same dishonestly he dishonestly retained it.

The word ‘ dishonestly’ has the same meaning as given under section 24 of the Code. Dishonest retention does not necessarily mean dishonest receipt of the property. Where a person pledged stolen properties with the accused, it could not be held that the accused had dishonestly received or retained the same, and so this section was not attracted. But where the accused was charged with having dishonestly received a stolen bicycle, and he tried to show that the bicycle was pledged with him but which he could not establish, and he also could not explain the possession of some other bicycles which were found with him, the accused could be convicted under this section on the basis of illustration (a) to section 114 of the Evidence Act.

The offence of dishonestly receiving or retaining stolen property under section 411 cannot be committed of an abandoned property. Where stolen cloth was recovered from the accused three days after a dacoity but no other articles were recovered from him, and his name was not mentioned either by any eye witness or by a person in his dying declaration who was killed in the dacoity, and neither was it known in the village, where the accused lived that a dacoity had been committed and goods had been stolen, the only presumption that could be drawn against the accused was that he knew that the cloth was stolen property, and not that it was stolen in course of a dacoity, and he was thus guilty under section 411. Where a boy had taken part in a dacoity and stolen cloth was recovered from his house, his father could not be held guilty under section 411 simply because he and his son were both joint occupants of the house. Where a bull had been let loose in course of a religious ceremony and it was nobody’s property, an offence under section 411 could not be committed against it because its owner had surrendered all his rights over it and it was thus a nulius proprietas. Where a stolen cow was recovered from the house of the accused, that by itself could not make the accused guilty under this section even if he is not able to explain its presence in his house. Where stolen articles were found in possession of the accused within two days after commission of a theft, and the accused was not able to explain the possession of the same, presumption could be drawn against him that he had committed an offence under this section. But in such a recovery two years after commission of a murder and theft, no such presumption of dishonest reception or retention could be drawn.

Where two deceased persons had gone to the fields with two buffaloes and never returned alive while the buffaloes were found in possession of the accused, he could be convicted under section 411 even though he could not be held guilty of murder. The principle seems to be that where the stolen property recovered from the accused is such which frequently changes hands, a shorter period may be required to draw a presumption under section 114, Evidence Act, but where the property does not change hands so frequently, a presumption may be drawn even after several months. Thus, where a barrel of gun was recovered from the accused about eight or nine months after a dacoity, the accused could be held guilty under this section if the facts and circumstances of the case point towards this end, and because this is not such a property which changes hands very frequently. The presumption is, however, optional.

Where it raises serious doubt in the mind of the court that the charge against the accused may not be true, the proper course would be to acquit the accused. Where some ornaments belonging to a deceased woman were recovered at the instance of the accused, and the deceased was seen wearing them last, no presumption of murder or under section 394 could be drawn against the accused, but he could be held guilty, in the absence of explanation, under section 411 of the Code. Where the prosecution failed to prove that the accused truck driver was knowingly carrying stolen property in his truck, he could not be held guilty under this section. Similarly, failure to identify the wrist watch found in possession of the accused could not result into his conviction under section 411.

But possession of the accused of cows in the herd of the deceased at the time he died would be sufficient to convict him under this section. Where a college student was found committing theft of a scooter, and while he was on bail he again stole a car, and he was sentenced to two years’ imprisonment and a fine of two thousand rupees for the first offence and six months’ imprisonment and fine under section 411, the Supreme Court held that looking to the young age of the accused and the fact that almost nine years had elapsed since the crime was committed as also the fact that he had a wife and children to support, the sentence could be reduced to that already undergone but the fine would not be interfered with. Similarly, where the accused dishonestly retained a stolen watch only a fine of one hundred and twenty five rupees was imposed as the accused had already been in jail for some time.

In A. Deivendran v. State of Tamil Nadu, the charges of murder and robbery against the main accused were proved. The Supreme Court ruled that mere recovery of some jewellery etc. belonging to the informant after two months of the occurrence from two other accused was not sufficient to convict them of murder by taking recourse to presumption under illustration (a) to section 114 of the Indian Evidence Act but they could be convicted under section 411 of the Code.

The offence under section 411 is cognizable, non-bailable and compoundable, and is triable by any magistrate.