MUHAMADU HANIFA *v.* BANDIRALA *et al.*

1899.
January 12.

P. C., Kurunegala, 10,064.

Dishonest retention of stolen property knowing the same to be stolen—Evidence Act of 1895, s. 14—Presumption of theft arising from possession "soon after" theft.

Retention implies an innocent receipt in the first instance, which becomes a dishonest retention after the receiver has come to know or has good reason to believe that the property so received and retained is stolen property.

Where certain property alleged to have been stolen was found in possession of the accused eighteen months after the alleged theft—*Held*, that such possession was not possession "soon after" the theft, so as to support the presumption of theft or dishonest retention of stolen property under section 14 of the Evidence Act of 1895, illustration 1.

THE facts of the case are fully set forth in the following judgment of the Supreme Court.

Bawa, for accused, appellant.

12th January, 1899. WITHERS, J.—

On the 22nd November last the prosecutor informed the Police Court of Kurunegala that about eighteen months previously a bundle of new cloths had been stolen from his possession at Elatalawa, and that some, if not all, of those cloths, together with a yard measure, belonging to the prosecutor's brother, had been found in the possession of the second accused, appellant.

Mr. Dunuwille, the Police Magistrate, inquired into the matter. It appears that the two accused are brothers-in-law, and occupy two separate rooms under one roof in a village called Kuliyapitiya, some distance off.

On the 20th November this house was searched under a warrant by the Korale Arachchi, Kiri Banda. In the room of the first accused, inside a wooden box, were found various articles of clothing, such as comboys, chintz cloth, Cannanore cloth, white

1899. *January 12.* WITHERS, J.

cloth, and also some rolls of handkerchiefs. In another box, in the same room, were found some articles of clothing, new and used.

In the room of the second accused were found two new comboys, three sarongs, twenty-four pieces of chintz, all new, and a yard measure with Tamil characters on it. Those were in a box. Also two new soman cloths, two new pieces of chintz cloth, and one or two articles of clothing were found in another box. There were also found in the room occupied by the first accused two canvas bags. The prosecutor swore that the cloths produced by the Korale Arachchi were new cloths in the bundle stolen from him at Elatalawa, eighteen months ago, and that the two canvas bags and the yard measure were in the bundle at the time that it was stolen.

The officer who executed the search warrant deposed that the accused disclaimed all right to the new articles of clothing found in their respective rooms. After examining the prosecutor and this officer, the Magistrate charged the two accused with dishonestly retaining the articles of stolen property identified by the prosecutor, having reason to believe that the same were stolen property under section 394 of the Ceylon Penal Code. The charge made no mention of the value of this property, and the conviction made no mention of the value either. If the value of the alleged stolen property exceeded a hundred rupees, the Police Magistrate was not competent to try the case. The prosecutor, however, swore that the articles of his found in the possession of the accused were worth a hundred rupees. He valued the articles in a lump, instead of valuing each particular article as he should have done. Thus, the Magistrate may perhaps be said to have had jurisdiction in the matter.

Without giving any reasons the Magistrate has found the accused guilty of the charge which he framed against them, and has sentenced the accused to six months' rigorous imprisonment each.

Assuming, as I think it may fairly be done, that the goods found are the goods stolen from the prosecutor eighteen months ago, the only evidence against the accused is the fact of the stolen articles being found in their possession.

The case for the defence, I may say, was that these articles had been introduced into the house on the night of the 19th November, with the connivance of the headman.

The question is, Can this conviction be justified, or, in other words, is there a legitimate presumption that the accused stole or received the property with guilty knowledge ? Of the offence of

dishonest retention, retention implies an innocent receipt in the first instance, which becomes a dishonest retention after the receiver has come to know or has good reason to believe that the property so received and retained is stolen property. The 14th section of the Evidence Act of 1895 enacts as follows :—" 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 the facts of the particular case." And the first illustration is this :—" The court may presume that " a man who is in possession of stolen goods *soon after* the theft " is either the thief or has received the goods knowing them to " be stolen, unless he can account for his possession."

If he is not found in possession of stolen goods soon after the theft, the prisoner will not be bound to account for the possession of them. The language of this illustration appears to me to be stricter than what one finds in English authorities. There we meet with the words " recent possession " and " recently stolen goods," and I regard the expression " recent " to be more elastic than the expression " soon after." In *Regina v. Partridge* (*7 C. & P. 551*) Patteson, J., observed that the length of time in cases of this kind is to be considered with reference to the nature of the articles stolen ; if they are such as pass from hand to hand readily, two months would be a long time. In another case Bayley, J. held that the prisoner could not be called upon to account for the manner in which the stolen property came into his possession when it was found there sixteen months after the larceny (*2 C. & P. 459*). What the nature of the property was does not appear. I cannot but come to the conclusion that no presumption in this case can be made against the prisoners. They cannot be said to be in possession of the stolen goods " soon after " the theft. I therefore set aside the conviction and acquit the accused.