

1896.  
January 29.

BANDA v. HENAYA.

*P. C., Kegalla, 14,815.*

*Criminal law—Dishonest retention of stolen property—Dishonest receipt—  
Ceylon Penal Code, s. 394.*

The offence of dishonestly retaining stolen property under section 394 of the Ceylon Penal Code must be carefully distinguished from that of dishonest receipt with guilty knowledge under the same section. The guilty receiver, when he receives property, knows it to be stolen; but guilty retention pre-supposes innocent receipt in the first instance. What must be proved on a charge of dishonest retention of stolen property is not only knowledge or reasonable belief on the part of the accused that the property in his possession was stolen, but that he, having acquired that knowledge, dishonestly kept such property.

**T**HE facts of the case sufficiently appear in the judgment. It was argued on 29th January, 1896.

*Bawa*, for appellant.

WITHERS, J.—

The accused in this case has been charged with the offence of dishonestly retaining a buffalo, the property of one Tikiri, knowing or having reason to believe that the animal was stolen property. The offence of retaining stolen property under section 394 must be carefully distinguished from that of dishonestly receiving property knowing or believing it to be stolen. The offence of receiving dates from the very moment of reception.

The guilty receiver, when he receives property, knows it to be stolen, and dishonestly receives it, *i.e.*, with the intention of procuring for himself unlawful gain, or causing unlawful loss to another person. But guilty retention presumes innocent receipt in the first instance. What must be proved against the man who retains such property is not only the knowledge or reasonable belief that the property in his possession is stolen, but that having acquired that knowledge he dishonestly keeps the property. I may be informed that some property I have is stolen property, and I may keep it with the intention of giving it to the true owner when discovered. That would not be an offence.

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Here it has not been brought home to the accused that after the animal had come into his possession he acquired the knowledge or reasonable belief that it was stolen, and that, notwithstanding, he kept it dishonestly.

I will not say that there is no material for charging the accused with the principal offence of theft, or with the offence of receiving stolen property, because from recent possession of stolen property it has been laid down that either theft or the offence of receiving with guilty knowledge may be presumed. If I was as confident as the Magistrate that the animal had been actually stolen from the cattle shed, if I was as satisfied as he is that Dingiri, the second witness for the prosecution, identified the herdsman's buffalo in the dark, when he says that he saw the accused take it to the elu for water, I might take it upon myself to use the provisions of section 211 of the Criminal Procedure Code against the accused, and find him guilty of either the offence of theft or receipt, though he has not been actually charged with either. Not taking quite the same view of the case as the Magistrate has done, I shall not do so. I simply set aside the judgment convicting this accused of the offence of retaining Tikiri's buffalo having reason to believe the animal to be stolen, and acquit and discharge him.