1966 *Present :* **Sansoni, C.J.**

G. W. STEPHEN, Appellant, *and* INSPECTOR OF POLICE, FORT, Respondent

S. C. 626/66—J. M. C. Colombo, 32881

Offence of assisting in disposing of stolen property—Quantum of evidence—Alternative counts in a charge—Mode of giving verdict—Penal Code, ss. 394, 396.

In a prosecution under section 396 of the Penal Code for voluntarily assisting in disposing of stolen property, there must be evidence that there was another person whom the accused assisted. Neither the thief nor the receiver of stolen property can be charged under section 396.

When a verdict of guilt is given on one of two alternative counts of retaining stolen property and disposing of stolen property, there should be no verdict on the other alternative count.

APPEAL from a judgment of the Joint Magistrate's Court, Colombo.

Neville Wijeratne, for Accused-Appellant.

Aloy N. Ratnayake, Crown Counsel, for Attorney-General.

Cur. adv. vult.

August 12, 1966. SANSONI, C.J.—

The accused-appellant was charged on four counts:

(1) that he did commit house-breaking by day in order to commit theft, by entering the office of the Indian Hume Pipe Company in Colombo (s. 440, Penal Code),

(2) that he did commit theft in the said office of 23 brass bushes and nuts (s. 369, Penal Code),

(3) that he did dishonestly retain stolen property, to wit: 7 brass bushes, knowing or having reason to believe the same to be stolen property (s. 394, Penal Code),

(4) in the alternative to count 3, that he did voluntarily dispose of stolen property, to wit: 7 brass bushes, knowing or having reason to believe the same to be stolen property (s. 396, Penal Code).

The accused had been working for the Indian Hume Pipe Company for many years. The articles in question had been kept in a safe in the office of that Company, and according to the evidence they were in that safe on 10th July, 1965. When the safe was opened on 13th July, they were found to be missing.

The Magistrate has found that on 11th July the accused sold 7 brass bushes, which were part of the stolen articles, to the witness Sellappah. He convicted the accused on count 4 and acquitted him on the other three counts.

Two points of law have been raised in appeal. The first is that there is no such offence as voluntarily disposing of stolen property. The offence is, of course, voluntarily assisting in concealing or disposing of or making away with property which the accused knows or has reason to believe to be stolen property (s. 396). The first point is therefore a good one, and I hold that the charge set out in count 4 discloses no offence.

The second point taken is connected with the first, and is supported by the facts as found by the Magistrate. There is no evidence in this case that any other person apart from the accused had possession of these stolen articles before they were sold to the witness Sellappah. Since the offence consists in assisting somebody else in concealing or disposing of property, there must be evidence that there was another whom the accused assisted; an accused cannot assist himself, so far as this offence is concerned. Hence it has been held that neither the thief nor the receiver of stolen property can be charged under section 396. See *Ram Bharosey v. State* [1].

On the evidence it seems to me that the Magistrate might well have convicted the accused under count 3 of having dishonestly retained part of the stolen property, but he has acquitted him although he has given no reasons for doing so. There is no appeal by the Attorney-General against such acquittal. It is therefore not open to me to convert the verdict of acquittal into one of conviction. The proper course for the

[1] *A. I. R. (1952) Allahabad 481.*

Magistrate to have followed in respect of both these alternative counts was not to give a verdict on count 3 since count 4 is alternative to count 3. I would invite attention to the case of *R. v. Seymour* [1] which held that when a verdict of guilt is given on one of two alternative counts of stealing and receiving, there should be no verdict on the other alternative count. So in this case, if the Magistrate had refrained from finding the accused not guilty under count 3 it would have been open to this court to find him guilty on count 3 on the evidence led, even after acquitting him on count 4.

In the result this appeal must be allowed and the accused acquitted on count 4 also.

Appeal allowed.