

Present : Akbar J.

1929.

KARTIGESU *v.* ALWIS.

182—*P. C. Colombo, 36,726.*

Retaining stolen property—Guilty knowledge—Reason to believe—Penal Code, s. 394.

Where a person is charged with dishonestly retaining stolen property, there must be proof that the circumstances were such that the accused must have felt convinced that the property was stolen.

A PPEAL from a conviction by the Police Magistrate of Colombo.
Choksy, for the accused, appellant.

May 21, 1929. AKBAR J.—

The accused has been convicted of the offence of dishonestly retaining stolen property, namely, a secondhand bicycle valued at Rs. 75, and sentenced to 6 weeks' rigorous imprisonment.

1929. As the Police Magistrate says, the facts are not contested.

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The bicycle was stolen on January 3, 1928, and was found in accused's possession on December 29, 1928. He immediately told the constable the story which he has narrated to the Court, namely, that he was in want of a bicycle to go about in the course of his business as an agent of the Singer Machine Co., and that he bought the machine from one Elma, about 8 months before his arrest, for Rs. 25 and that he had paid Rs. 12, and that he has not paid the balance because Elma did not press him for it, excepting for one occasion a month after the sale. It is in evidence that Elma, who lives in the neighbouring village, has now disappeared. On the other hand, the bicycle is in the same condition in which it was when it was stolen, and even the number is still on it. The Police Vidane of accused's village says that accused went about openly on the bicycle, and even came to his house on it and occasionally left it at his house. The Police Magistrate has convicted the accused on the one point of the non-payment of the balance Rs. 13, because "he ought to have suspected that he was retaining stolen property. If he did not do so, he must be a man of abnormal intelligence, as a man of ordinary intelligence and probity would have reflected that there was reason to believe the cycle was stolen."

It is important to bear in mind that the words in section 394, Penal Code, are "knowing or having reason to believe," and not reason to suspect.

It has been held in India (see *I. L. R. 6 Bombay 402*) that the word "believe" in the corresponding section of the Indian Penal Code is much stronger than the word "suspect" and involves the necessity of showing that the circumstances were such that a reasonable man must have felt *convinced* in his mind that the property was stolen property. It is not sufficient to show in such a case that the accused was careless or that he had reason to suspect that the property was stolen, or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired. This case is approved by Gour in paragraph 4171. Further, paragraph 4172 shows that the test is, what is the state of mind of the accused, "and not that the circumstances were sufficient to induce such belief in the mind of any prudent and reasonable man. The latter test is often resorted to in the Civil law, but it has no place in the criminal jurisprudence of this country."

If we apply this test, and not the one proposed by the Police Magistrate, the fact that accused used the bicycle openly in the same condition in which it was stolen shows to my mind that he was *not convinced in his mind* that the bicycle was stolen property.

I set aside the conviction and acquit the accused.

Set aside.