APPELLATE CRIMINAL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Davies.

GUZZALA HANUMAN (PRISONER), APPELLANT,

1902. October 15.

v.

EMPEROR, RESPONDENT.*

Penal Code—Act XLV of 1860, ss. 395, 411—Charges of dacoity and receiving stolen property—Charge to jury—Possession of stolen property—Misdirection.

On the trial of an accused, before a Judge and jury at a Court of Session, for dacoity and receiving stolen property, the Judge, in his charge to the jury, directed them that the fact of a stolen shirt having been found in possession of the accused two months after the dacoity, was sufficient to justify them in convicting the accused of the dacoity:

Held, on appeal, that this was a misdirection. Whether the possession of the stolen property was recent enough to warrant a conviction for the substantive offence was a matter entirely for the jury and should not have been put to them in the positive way which the Judge adopted.

CHARGES of dacoity, under section 395, and of receiving stolen property under section 411 of the Indian Penal Code. The Sessions Judge, in the course of his charge to the jury, gave the following direction:—

"This is a simple case. On 31st January of this year a dacoity took place at Sanganakal in the house where the clerks of the District Court were staying. Prosecution witnesses Nos. 1 and 2 are two of the clerks who were there. The first of them lost, among other things, a flannel shirt. This shirt is identified both by the clerk and the man who made it for him (prosecution third witness), and also the tailor (prosecution fourth witness), who cut the shirt from the cloth. Two months afterwards, in connection with the investigation of another dacoity at Halvi, the Yemmiganur Inspector (prosecution fifth witness), searched the houses of Korachas and also surrounded certain date topes where a wandering gang of Korachas was encamped. Four out of ten wandering Korachas were captured. One of these is the prisoner before the Court. Upon him was found the identical shirt lost by the clerk in the

* Criminal Appeal No. 532 of 1902, presented against the sentence of J. J. Cotton, Sessions Judge of Bellary Division, in Case No. 45 of the Calendar for 1902.

GUZZALA HANUMAN v. EMPEROR.

dacoity. Two Inspectors (prosecution witnesses Nos. 5 and 6), who were present at the arrest of the accused prove that he was actually wearing the tell-tale garment. The possession of a dacoited article within so short a time after the commission of the dacoity is evidence of dacoity against the accused unless he can prove that he honestly came by it."

The jury convicted the accused on both charges and the Judge sentenced him to five years' rigorous imprisonment (the prisoner admitting a previous conviction).

The accused preferred this appeal but was not represented.

The Public Prosecutor in support of the conviction.

JUDGMENT.—There was a clear misdirection to the jury in the Judge's directing them that the finding of the stolen shirt with the accused two months after the dacoity was "so short" a time as to justify them in convicting the accused of the dacoity itself. Whether the possession of the stolen property was recent enough to warrant a conviction for the substantive offence was a matter entirely for the jury, and should not have been put to them in the positive way which the Judge adopted. The jury have not only convicted the accused of being in possession of stolen property under section 411, Indian Penal Code, but have also found him guilty of dacoity itself. This is manifestly a contradictory finding for if a man steals an article, he cannot also be convicted of receiving it, and the verdict of the jury as it is, cannot stand. We think the jury primarily intended to convict the accused of the offence under section 411, Indian Penal Code, and their conviction of the offence of dacoity as well was due to the misdirection pointed out above. We therefore set aside the verdict of guilty of dacoity and confirm the verdict of guilty of the offence under section 411, Indian Penal Code. In lieu of the sentence inflicted by the Judge, we sentence the prisoner to two years' rigorous imprisonment under sections 411 and 75 of the Indian Penal Code.