REVISIONAL CRIMINAL.

Before Mr. Justice Addison.

1928

April 25.

HAYAT. Petitioner

versus

THE CROWN. Respondent.

Criminal Revision No. 185 of 1928.

Indian Penal Code, 1860, section 411—Possession of stolen property—belonging to different owners—Separate convictions—Burden of proving different acts of receiving.

Where a person was found in possession of stolen property belonging to different owners and there was no evidence that he had received the same at different times.

Held, that he could not be convicted under section 411, Indian Penal Code, separately in respect of property identified by each owner.

And that the *onus* in such a case lies on the prosecution to establish that the property was received by the accused at different times, and it is not for the accused to prove that he had received the same at one time.

Queen-Empress v. *Makhan* (1), *Emperor* v. *Sheo Charan* (2), *Ishan Muchi* v. *Queen-Empress* (3), and *Ganesh Sahu* v. *Emperor* (4), followed.

Sant Singh v. *The Empress* (5), dissented from.

The Crown v. *Rampershad* (6), and *Ghulama* v. *Emperor* (7), referred to.

Application for revision of the order of Khan Bahadur Sheikh *Din Muhammad, Sessions Judge, Multan, dated the 20th August 1926, affirming that of* Sardar *Bahadur Khan, Sub-Divisional Magistrate, Alipur, dated the 8th April 1926, convicting the petitioner.*

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(1) (1893) I L. R. 15 All. 317.
(2) (1923) I. L. R. 45 All. 485.
(3) (1888) I. L. R. 15 Cal. 11.
(4) (1923) I. L. R. 50 Cal. 594.
(5) 26 P. R. (Cr.) 1889.
(6) 5 P. R. (Cr.) 1874.
(7) (2926) 96 I. C. 120.

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Nemo, for Petitioner.

RAJ KRISHNA, for GOVERNMENT ADVOCATE, for Respondent.

JUDGMENT.

ADDISON J. — The petitioner was convicted of three different offences under section 411, Indian Penal Code, by a 1st class Magistrate on the 8th April 1926 and was sentenced to six years' rigorous imprisonment in addition to a fine of Rs. 200 to be followed by six years' police surveillance under section 565, Criminal Procedure Code. On appeal the learned Sessions Judge maintained the three convictions under section 411, Indian Penal Code, but reduced the sentences to one year, two years and one year's rigorous imprisonment, total four years, to be followed by six years' police surveillance under section 565, Criminal Procedure Code, that is, two years for each offence. I admitted this revision as it seemed to me that a person who was found in possession of cattle identified as belonging to different owners should not be convicted of several offences of receiving in respect of the property identified by each owner, unless there was evidence to prove that they were received by him at different times. The petitioner was found with the stolen cattle of three different persons shortly after the thefts of the cattle had occurred. There was no other evidence against him and nothing to show that there were three distinct acts of receiving the stolen cattle.

ADDISON J.

I find that there is a Full Bench decision of the Punjab Chief Court, *Sant Singh* v. *Empress* (1), which took the view that it was for the accused to

(1) 26 P. R. (Cr.) 1889 (F. B.).

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establish that there was only one act of receiving when he was found with property forming the subject-matter of different thefts. This Full Bench decision dissented from a previous Division Bench decision, *The Crown* v. *Ram Parshad* (1). The Sind Court has taken the same view as that expressed in the Full Bench decision of the Punjab Chief Court (See *Ghulamo* v. *Emperor* (2). The Allahabad and Calcutta High Courts have taken the other view. The Allahabad decisions are *Queen-Empress* v. *Makhan* (3), and *Emperor* v. *Sheo Charan* (4), and the Calcutta decisions are *Ishan Muchi* v. *Queen Empress* (5), and *Ganesh Sahu* v. *Emperor* (6). It seems to me that the correct view is that the prosecution must establish its case and that it was, therefore, for the prosecution to establish that there were three different acts of receiving. No case, following the Full Bench decision of the Punjab Chief Court, can be traced, and I know that the practice of this Court of late years has been to follow the Allahabad and Calcutta High Court's view. With very great respect I wish to say that my view is the same as that taken by the learned Judges of the Allahabad and Calcutta High Courts. In any case it was laid down in the Punjab Chief Court's Full Bench decision that Magistrates would be wise not to inflict aggregate sentences amounting to more than the maximum for the offence, that is, three years. This was probably because the learned Judges had some doubt as to the proper view to be taken of the law. I, therefore, accept these three petitions and in modification of the order of the learned Sessions Judge convict the petitioner of one offence only under

(1) 5 P. R. (Cr.) 1874.
(2) (1920) 96 I. C. 120.
(3) (1893) I. L. R. 15 All. 317.
(4) (1923) I. L. R. 45 All. 485.
(5) (1885) I. L. R. 15 Cal. 511.
(6) (1923) I. L. R. 50 Cal. 594.

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section 411, Indian Penal Code. The petitioner has already been for more than two years in jail. I, therefore, reduce the sentence of imprisonment to that already undergone. I also reduce the period of police surveillance under section 565, Criminal Procedure Code, to two years in all.

A. N. C.

Revision accepted.
Sentence reduced.

PRIVY COUNCIL.

Present: Viscount Dunedin, Lord Salvesen and Sir John Wallis.

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Feb. 11.

PUNJAB COTTON PRESS CO., LTD. AND ANOTHER
APPELLANTS
versus
THE SECRETARY OF STATE, RESPONDENT.

Privy Council Appeals Nos. 39, 40 and 41 of 1925.
(High Court Civil Appeal No. 2440 of 1917).

Indian Limitation Act, IX of 1908, Article 2: Suit for compensation for damage caused by act of Canal Officer—Limitation—necessity of deciding whether the Act comes within the purview of section 15 of the Northern India Canal and Drainage Act, VIII of 1873.

A suit by a mill-owner against the Secretary of State for compensation for damage, alleged to have been caused (more than 90 days prior to date of suit) as the result of action taken by the Canal authorities to protect a railway embankment, was dismissed by the High Court, as time-barred under Article 2 of the Indian Limitation Act, without arriving at a definite finding that such action was necessary to avoid an accident to the canal.

Held, that as upon the statement of the case as contained in the plaint this was an act which the defendants performed at their own hands and not under authority conferred on them by any statute, the suit ought not to have been dismissed under Article 2, unless the defendants could show that what