

1952

Present : Nagalingam A.C.J.

S. KATCHIMOHAMADU, Appellant, and
P. K. MOOYAN (S. I. Police), Respondent

S. C. 1,309—M. C. Batticaloa, 13,048

Penal Code, s. 394—Receiving stolen property—Several articles in accused's possession—Different owners—Presumption of one offence only—Autrefois acquit—Criminal Procedure Code, s. 330.

Where a person, who is found in possession of several articles belonging to different owners, is tried and acquitted of the offence of receiving stolen property in respect of some of the articles, he cannot be prosecuted again for the same offence in respect of any of the remaining articles. In that event, he is entitled to take the plea of *autrefois acquit* unless there is evidence to show that the articles were received by him on different occasions or that he came into possession of them at different times.

APPÉAL from a judgment of the Magistrate's Court, Batticaloa.

M. A. M. Hussein, for the accused appellant.

Cecil Gunawardene, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

May 15, 1952. [NAGALINGAM A.C.J.—

A plea of *autrefois acquit* is taken on this appeal on behalf of the appellant. The appellant, the 3rd accused in the proceedings, and two others were charged in case No. M. C. Batticaloa 11,666 with having committed theft of six goats belonging to one Katchimohamadu Shahul Hameed and in the alternative with having retained possession of the said animals knowing or having reason to believe that the animals were stolen property. After trial, the 1st accused in the case was convicted of having retained stolen property and duly sentenced, while the 2nd and 3rd accused were acquitted.

In the present case bearing No. M. C. Batticaloa 13,048 the same three accused were charged with having committed theft of three goats belonging to one Ismail Lebbe Seeni Mohamadu and in the alternative with having retained possession of the said animals, knowing or having reason to believe the animals to be stolen property. After trial, the learned Magistrate acquitted all the accused of the offence of theft but convicted them of having retained the animals, which they knew to be stolen property.

There was no evidence in the case as to the person or persons by whom the thefts were committed, though there was evidence that the thefts as well as certain other thefts relating to certain other animals had taken place on the night of the 6th January. The evidence, however, against the accused persons, both in the earlier trial and the present one, was that they were found driving a flock of fifteen goats, all said to have been stolen on the night of the 6th, and they were detected driving the animals in the early hours of the morning of the 7th January.

Mr. Hussein on behalf of the appellant who is the 3rd accused in the present case contends that the present trial is barred by reason of the provisions of section 330 of the Criminal Procedure Code in that the appellant had previously been tried and acquitted of the offence of having retained stolen property and that in the present case the offence is the same offence which was the subject matter of the earlier proceedings. It is unnecessary to consider the effect of the charges in the two cases in respect of the offence of theft because in respect of these offences the accused were acquitted in the respective cases.

The question thus raised leads to a consideration as to whether the offence in the present case is identically the same as the one which was the subject of the prosecution in the former. As remarked earlier, the evidence against the accused persons was that they were found driving the flock of fifteen animals. The offence of retaining stolen property was therefore in respect of the accused having been found in control of all the fifteen animals. Mr. Hussein contends that there was only one offence and that in the absence of any evidence to shew that the several animals were received by the accused persons on different occasions or that they came into possession at different times there was only one offence which they could be said to have committed and that it cannot be said that there were as many offences as the number of thefts that had taken place in respect of the several animals.

Mr. Hussein supported his argument by reference to three cases, the first of which is that of *Ganeshi Sahu v. Emperor*¹ where on almost identical facts the Court held that there was no more than one offence disclosed and that a subsequent conviction was illegal in view of the provisions of section 403 of the Indian Criminal Procedure Code. To much the same effect are the other two cases of *Hayat v. Emperor*² and *Jalal v. Emperor*³.

The contention of Mr. Hussein is sound and the conviction of the appellants after he had been acquitted of the identical offence in the earlier proceedings is contrary to the provisions of section 330 of the Criminal Procedure Code.

I therefore set aside the conviction and acquit the accused and acting in revision and for the same reasons set aside the convictions of the 1st and 2nd accused as well. The prison authorities will be communicated with immediately if the 1st and 2nd accused are yet in prison under the conviction and sentence entered in this case.

Appeal allowed.
