the plaintiff Union became entitled to claim the 60 years' period of limitation under Article 149. It must, therefore, be held that the suit was wrongly dismissed as barred by time and I accordingly accept the revision petition and set aside the order of dismissal of the suit which will now be decided by the Small Cause Court Judge on merits. The parties would bear their own costs in this petition and they are directed to appear in the lower Court on 6th of January, 1958.

B.R.T.

REVISIONAL CRIMINAL

Before Mehar Singh, J.

STATE,—*Petitioner.*

versus

DINA NATH, *Respondent.*

Criminal Revision No. 156-D/55.

1957

Dec., 23rd

Code of Criminal Procedure (Act V of 1898)—Section 234—Accused found in possession of stolen property, the proceeds of six different thefts committed at different times in six different places—One charge of receiving stolen property under section 411, Indian Penal Code, framed—Whether legal.

Held, that where an accused person is found in possession of stolen articles which were found to concern six thefts committed on six different occasions and in the houses of six different persons, but one charge under section 411 of the Indian Penal Code for receiving stolen property knowing it to be stolen was framed, the charge was legal. In such circumstances all that can be said is that the accused has been found guilty of at least one act of receiving, for he must have the benefit of the doubt that he did not receive the different stolen articles on different dates.

Jalal v. *Emperor* (1), relied on; *Hyder* v. *Emperor* (2), dissented.

Petition for revision under section 439 of Criminal Procedure Code of the order of Shri Tara Chand Aggarwal,

(1) A.I.R. 1932 Lah. 615.
(2) 91 I.C. 64.

Additional Sessions Judge, Delhi, dated the 22nd July, 1954, reversing that of Shri Atam Parkash Begai, Magistrate 1st Class, New Delhi, remanding the case to the Court of the Magistrate.

J. L. BHATIA, for Petitioner.
SHER NARAIN, for Respondent.

ORDER

Mehar Singh, J. MEHAR SINGH, J.—The question for consideration in this revision petition is whether one charge framed under section 411 of the Penal Code against Dina Nath accused, of which charge he has been convicted and sentenced to one year's rigorous imprisonment on June 8, 1954, by a First Class Magistrate of New Delhi, is a charge framed according to law? The facts are these.

On September 9, 1953, sixty-five articles were recovered from the accused. On September 20, 1953, a watch was recovered from his possession. The sixty-six articles were found to concern six thefts, committed on six different occassions and in the houses of six different persons. There have been two recoveries of all the sixty-six articles, one of sixty-five articles, and the second of one article. The learned trial Magistrate charged the accused for one offence under section 411 of the Penal Code in reference to all the sixty-six articles and convicted and sentenced him as above.

The accused went in appeal which was heard on July 22, 1954, by the Additional Sessions Judge of Delhi, who has set aside the conviction and sentence of the accused and sent back the case for retrial on the ground that the accused could not be charged at one trial, according to law, of receiving stolen property of six different thefts, committed on six different occasions and from the houses of six different persons, for it might well

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be that he received the stolen property of each theft on a different date. He is of the opinion that under section 234 of the Code of Criminal Procedure only three offences of the same kind within a year may be charged together and in this case more than three offences have been charged together. It is the State that has come in revision against the order of the learned Additional Sessions Judge.

The learned counsel for the State points out that there is no material on the record to show that, though the articles recovered relate to six different thefts, the receiving of the same took place on different dates, and relying on *Jalal* v. *Emperor* (1), he says that, in the circumstances of the case, the accused could only have been charged for one offence under section 411 of the Penal Code and he could not have been tried for six different offences under that section in six different cases. In reply on behalf of the accused the learned counsel has argued that six thefts took place on different occasions and as there is no evidence that the receiving took place on one and the same date, inference must be that it was on different dates, in which case the charge framed by the trial Magistrate cannot be sustained in law. He relies upon *Hyder* v. *Emperor* (2).

In so far as the facts of the case are concerned it is clear that six different thefts took place on six different occasions from the houses of six different persons. The thieves have not been traced. All that has been found is that on one date the accused was found in possession of sixty-five stolen articles and on a subsequent date of one stolen article. So that what is certain is that on particular dates the accused was in possession of stolen property. There is much that can be said for the

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view of the learned Judge in *Jalal* v. *Emperor* (1) that, in such circumstances, the prosecution fails to establish that acts of receiving were on different occasions so as to make out a number of offences against an accused person. But that was a reverse case in which stolen property of five different thefts on five different occasions was found in the possession of the accused. The accused was prosecuted in five different cases under section 411 of the Penal Code and was sentenced in each case. The learned Judge came to the conclusion that he could only have been prosecuted for one offence under section 411 of the Penal Code and sentenced once only. This is what has actually been done by the learned trial Magistrate in the present case, though, in my opinion, the learned trial Magistrate would have been well justified in framing two charges of an offence under section 411 of the Penal Code against the accused, one having relation to the sixty-five articles recovered from him on one date, and the other having relation to the one article recovered from him on a subsequent date. So the learned trial Magistrate has been rather over cautious and instead of framing two separate charges or trying the accused in two separate cases for the same offence, he has only charged him for one offence under section 411 of the Penal Code for all the sixty-six stolen articles recovered from his possession. All that section 411 of the Penal Code requires is (a) dishonest receiving or retention of any stolen property, and (b) such receiving or retention of it knowing or having reason to believe the same to be stolen property. It has been made clear that here there is no evidence, and indeed possibly there could be no evidence, as to when the accused received the articles. He may have received the articles on

(1) A.I.R. 1932 Lah. 615(1).

different dates or occasions and he might well have received all the sixty-six stolen articles at one and the same time. In such circumstances I am disposed to agree with the learned Judge in *Jalal* v. *Emperor* (1), that all that can be said is that, in such a case, the accused has been found guilty of at least one act of receiving, for he must have the benefit of the doubt that he did not receive the different stolen articles on different dates. The learned trial Magistrate could have framed two charges against the accused for an offence under section 411 of the Penal Code or try him separately for those two charges, but instead he has tried him for one charge under that section, and I do not see how he has committed any error in law in doing so. The only possible contention that can be advanced on behalf of the accused is that such a trial has resulted in prejudice to him, but that is insubstantial as he has been convicted of only one offence, instead of a number of offences, under section 411 of the Penal Code.

The case *Hyder* v. *Emperor* (2), cited by the learned counsel for the accused, has to be considered, before I part with this case. In that case also there were six stolen animals that were stolen on five different occasions from five different persons and the learned Judges observed—

> "The offence of receiving stolen property under section 411 of the Penal Code is the offence of receiving a particular article of stolen property or property stolen in a particular theft and the law says that not more than three offences committed in the same year should be tried at the same trial. Here the fact is that six specific animals belonging to five specific persons and stolen by five different acts of theft, from those five specific

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persons form the basis of this charge. Therefore, it seems clear that the accused is charged with at least five separate offences of receiving stolen property. This is wholly illegal."

With respect I find myself unable to agree with the learned Judges that the offence under section 411 of the Penal Code is the offence of receiving a particular article of stolen property or property stolen in a particular theft. The reason is that it is not inconceivable that, although thefts may have been committed on different occasions, the thief may pass on the stolen property to the receiver at one time. The act of receiving in such a case would be one act, although the stolen property relates to a number of thefts and to a number of stolen articles. So that in my opinion this case really is not helpful in deciding the case under consideration.

In the view taken above, the order of the learned Additional Sessions Judge setting aside the conviction of the accused and sending the case back for retrial of the accused for six offences in this case cannot be maintained. The order amounts to an acquittal of the accused, but at the same time his retrial has been ordered by the learned Additional Sessions Judge. Since the accused is not being convicted here, I consider that in exercise of the powers of revision it is open to me to set aside the order of the learned Additional Sessions Judge and to direct him to dispose of the appeal of the accused on merits and according to law. This I do accordingly. The accused is said to be on bail and will continue to be on bail under the same bond and under the same terms and conditions as prevailing at present until he appears before the appellate Court for the hearing of his appeal in this case.

B.R.T.