

1945

Present: Wijewardene J.

DON EDWIN, *et al.*, Appellants, and INSPECTOR OF POLICE,
MATARA, Respondent.

180-183—M. C. Matara, 56,055.

Appellate Court—Where it is safer that the conviction should not be allowed to stand—Good reason to set aside the conviction.

Where the consideration of the evidence in a case leaves upon the Appellate Court the impression that on the whole it is safer that the conviction should not be allowed to stand, it would be a good and sufficient reason for interfering with the order of the Magistrate.

A PPEAL from a conviction by the Magistrate of Matara.

H. V. Perera, K.C. (with him *S. W. Jayasuriya*), for the accused, appellants.

E. H. T. Gunasekara, C. C., for the Crown.

Cur. adv. vult.

May 21, 1945. WIJEYWARDENE J.—

The four accused were convicted on a charge of robbing a bicycle of one John de Silva and were sentenced, each, to six months' rigorous imprisonment.

The robbery is said to have taken place on the main road near the Kumbalagama Market on August 16, 1941, at 9 P.M., and almost opposite to the boutique of the witness, Podi Singho. The scene of the robbery is less than half a mile from the house of the Headman. John de Silva, however, did not make a complaint to the public authorities until 4.30 A.M. on August 17. The delay in making the complaint is sought to be explained by the somewhat extraordinary circumstances in which the offence is alleged to have been committed. John de Silva says that he was cycling home that night when the four accused came and "blocked" his path. The third and fourth accused seized him from behind, while the first accused held with one hand the handle of the cycle and placed the other hand against his neck and "raised" him and "pushed" him. The first accused then "snatched" the cycle from him and gave it to the second accused. Though John de Silva had seen the accused before, they were neither his friends nor acquaintances and, therefore, this incident cannot be regarded as an instance of undue familiarity on the

part of acquaintances. He did not raise a cry, though he knew that if he "had done so a crowd would have collected". He thought the occasion demanded only a meek inquiry as to "what he (the first accused) meant". He was quite satisfied when the first accused vouchsafed a reply suggesting that he "meant" to borrow the cycle for the second accused to ride to the Town and undertook to return the cycle later. The second accused went on the cycle towards the town and the other accused disappeared. John de Silva elected to remain on the road; alone and dinnerless, expecting the accused to bring back the cycle to him. He does not explain why he did not go home and take his dinner instead of starving on the road. Is it because he thought it unkind to put the accused to the inconvenience of taking the cycle to his place two miles away and that he should oblige them by remaining at the spot so as to meet them immediately on their return with the cycle? After waiting for seven hours it appears to have occurred to him that the accused might have "meant" not to borrow his cycle but to rob it. He then went and made a complaint to the Police, but they were unable to trace the cycle or any part of it. John de Silva who gives this evidence is not an unsophisticated village lad. He is forty years old, has been a motor car driver for twenty years in the Matara District and is not unfamiliar with the Criminal Courts, as he had been convicted on a charge of assault. He seeks to support his story by calling three witnesses, Methias, Siridias and Podi Singho. Of these, Methias and Siridias have been proved to be carters employed under his brother-in-law, while Podi Singho is admittedly a person who has had some unpleasantness with the first accused a few weeks earlier. Methias and Siridias say they happened to pass the scene of the incident that night, as they were returning to their village one and a half miles away. They saw the first accused "snatching" the cycle from John de Silva. They advised John de Silva to "wait" on the road until the cycle was returned to him and went away. Podi Singho says that he was in his boutique and saw the cycle "being snatched from John de Silva".

I do not think it necessary to refer to the discrepancies in the evidence of these witnesses pointed out by the Counsel for the appellants. The accused who have been convicted on this evidence have not been convicted before for any offence. The third accused is a Vedarala and is closely related to the other accused. They are possessed of property and are apparently men of some position in the locality.

The first accused gave evidence and called two witnesses, James Appu, the Manager of the Co-operative Stores, Kumbalgama, and the Headman of the village. James Appu said that John de Silva told him about 7.30 P.M. on August 16 that he kept his cycle near Podi Singho's boutique and went to see a friend and found the cycle missing when he returned to the spot. The defence suggested that David de Silva, and *ex* headman and a friend of John de Silva, seized the opportunity afforded by the loss of the cycle to "engineer a false case" against the accused owing to his enmity with them. The first accused stated that David de Silva was angry with them because the first accused gave his sister in marriage to the third accused after rejecting a proposal of marriage sent by David de Silva. John de Silva admits the truth of the facts regarding

David de Silva's proposal of marriage and the subsequent marriage of the first accused's sister and the third accused. The Headman says that John de Silva and David de Silva "associate with each other" while John de Silva himself denies only that David de Silva is a "good friend" of his.

Apart from the evidence led by the defence, I am of opinion that the improbability of the singular story narrated by John de Silva is a good and sufficient reason for interfering with the order of the Magistrate. I would adopt the language of Alverstone L. C. J. in *Bradley's case* and say that on the whole I think it safer that the convictions should not be allowed to stand.

I allow the appeal and acquit the accused.

Appeal allowed.

