

1970

Present : Samerawickrame, J.

S. NALLATHAMBY and another, Appellants, and MUTTU-KRISHNAN (Police Sergeant), Respondent

S. C. 82-83/69—M. C. Charakachcheri, 25079

Evidence Ordinance—Section 27—Scope.

Under section 27 of the Evidence Ordinance, a statement in consequence of which an article is recovered may be used against an accused person only if it was made while he was in the custody of a police officer.

¹ (1969) 73 N. L. R. 23.

² (1953) 1 A. E. R. 350 at 355.

APPEALS from a judgment of the Magistrate's Court, Chavakachcheri.

C. Motilal Nehru, for the 2nd accused-appellant.

1st accused-appellant absent and unrepresented.

Tyrone Fernando, Crown Counsel, for the Attorney-General.

April 18, 1970. SAMERAWICKRAME, J.—

The learned Magistrate has relied for the convictions of the 1st and 2nd accused-appellants on statements made by them to the police in consequence of which the stolen articles had been recovered. The actual statements made by the 1st and 2nd accused have not been produced nor proved.

Learned Crown Counsel properly draws my attention to the fact that the statement made by the 2nd accused was made before he was arrested. Under Section 27 of the Evidence Ordinance, a statement in consequence of which an article is recovered may be used against an accused person only if it was made while he was in the custody of a police officer. In the circumstances the convictions of the 1st and 2nd accused cannot stand.

The appeals are allowed. Their convictions and sentences are set aside.

Appeals allowed.