1923.

Present : Jayewardene A.J.

BANDA *v.* ANDRE APPU *et al.*

556—P. C. Colombo, 993/C.

Theft—Workmen engaged in soldering found soon after close of work with rods of soldering lead—Presumption of theft—Evidence Ordinance, s. 114.

Two workmen employed at the Railway workshop were found in the evening with sixteen rods of soldering lead in their waist about 100 fathoms from the workshop soon after the workshop was closed. Rods of lead like those found on them were used in the workshop, and the accused were engaged in soldering and doing other work with such lead. Owing to the large quantity of lead used at the workshop, it was not possible to say that the pieces found on the accused were missed by the Railway authorities, and no one identified the lead as lead belonging to the Railway.

Held, that the accused were rightly called upon to account for their possession of the lead, and that in the circumstances they were rightly convicted.

THE facts appear from the judgment.

J. S. Jayawardene, for the accused, appellants.

October 3, 1923. JAYEWARDENE A.J.—

In this case two workmen employed at the Ceylon Government Railway workshops have been convicted of the theft of sixteen pieces or rods of soldering lead, worth Rs. 2, the property of the Ceylon Government Railway. The appellants were arrested on suspicion by two constables at about 4.45 in the evening, with the lead in their waists, about a 100 fathoms from the workshop. Rods of lead like those found on the accused are used in the Railway workshop, and the accused are engaged in soldering and doing other work with such lead. There is no evidence that rods of lead like those imported for the Railway are to be bought elsewhere, as the Assistant Works Manager only said that he did not know that such lead was procurable in the market. Owing to the large quantity of lead used at the workshop, it was not possible to say that the pieces found on the accused were missed by the Railway authorities. It is urged for the accused that as the prosecution has not proved that any lead was missed from the workshop, and as nobody has identified the lead as the lead belonging to the Railway, the accused must be acquitted. I do not think this contention is well founded. In my opinion the Court rightly presumed from the circumstances

that the lead was stolen property. It is not always necessary for the prosecution to prove that the complainant missed any of the goods alleged to be stolen, it is sufficient if the Court can infer from the facts and circumstances that they were stolen from him. Ameer Ali and Woodroffe in their *Law of Evidence* (*6th ed., p. 715*), commenting on illustration (*a*) of section 114 of the Indian Evidence Act, which is identical with section 114, illustration (*a*), of our Ordinance, and which enacts that—

> " The Court may presume (*a*) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."

say :—

> " The property must be shown to have been stolen by the true owner swearing to its identity and loss, or the circumstances must be such as to lead in themselves to the conclusion that the property was not honestly come by. So persons employed in carrying sugar and other articles from ships and wharves have been convicted of theft upon evidence that they were detected with property of the same kind upon them recently upon coming from such places, although the identity of the property as belonging to such and such persons could not otherwise be proved. If the property be proved to have been stolen, or may fairly be presumed to have been so, then the question arises, whether or not the prisoner is to be called upon to account for the possession of it."

The English law is the same, as the following extract from *Archibald's Criminal Pleading* (*21st ed., p. 276*) shows :—

> " Although upon an indictment for larceny it is necessary to prove that goods of the prosecutor have been taken, that may be proved by circumstances, although the witnesses for the prosecution cannot swear to the loss of the article said to be stolen, nor that the property found upon the prisoner and alleged to have been stolen is the prosecutor's. A large quantity of pepper was kept in bulk in a warehouse where the prisoner had no business. He was met coming out of the warehouse having on him a quantity of pepper of the same description as that in the warehouse. On being stopped he threw down the pepper, and said, I hope you will not be hard on me. From the large quantity in the warehouse, it could not be proved that any pepper had been taken from the bulk. Upon these facts, it was held that there was abundant evidence

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to justify the conviction of the prisoner for stealing the pepper. *R. v. Burton.*[1] 'If a man goes into the London Docks sober, without means of getting drunk, and comes out of one of the cellars very drunk, wherein are a million gallons of wine, I think that would be reasonable evidence that he had stolen some of the wine in that cellar, though you could not prove that any wine was stolen, or any wine was missed.'—*Per* Maule J. in *R. v. Burton, Dears 282.*"

The accused use pieces of lead, similar to those found on them, in their work at the workshop ; they were arrested with the lead in their possession close to the workshop soon after the workshop was closed for the day, and the lead was found concealed in their waists. Upon proof of these facts the accused were rightly called upon to account for their possession of the lead. The accused in their statements said that they bought the lead from a man at a boutique at Maulanawatta, where they had gone to take tea. They, however, gave no evidence, and called no witnesses to account for their possession, although they had mentioned one Sada Lal as having seen the sale. In the circumstances and on the facts, the learned Police Magistrate was perfectly justified in drawing the inference that the lead was stolen from the Railway workshop in fact the inference seems irresistible. Counsel for the accused relies on *The R. M., Matale South, v. Goonesekera*[2] in support of his contention. That case is, however, clearly distinguishable, for the Court there held that the evidence of identity was defective, as the owner declined to swear to the fact that the rubber plants alleged to be stolen were the same as those on his land, and there was no evidence that the accused was ever actually seen near the spot where the theft took place. This fact, in the opinion of the Court, differentiated that case from the English cases. The case was considered to be one of the highest suspicion, but the accused was given the benefit of the doubt. That case is, therefore, on the facts very different from the facts proved here, where the accused was admittedly at the spot where lead similar to the lead alleged to be stolen was being used by the accused themselves in their work. Their conviction is, therefore, in my opinion right, and must be affirmed. In view of the fact that the first accused had been employed in the workshop for twelve years and the second accused for six years, and the trifling value of the articles stolen, I reduce the sentence to six weeks' rigorous imprisonment.

Sentence varied.

[1] *Dears 282 : 23 L. J. (M. C.) 52.*

[2] *(1905) 1 Leem. 82.*