

Present : De Sampayo J.

1921.

KANDIAH v. PODISINGHO.

822—P. C. Trincomalee, 3,025.

*Retaining stolen property—Reasonable account given by accused—Burden of proof that the account is false is on prosecution.*

“When a man, in whose possession stolen property is found, gives a reasonable account of how he came by it, as by telling the name of the person from whom he received it, and who is known to be a real person, it is incumbent on the prosecution to show that account is false.”

THE facts appear from the judgment.

*H. J. C. Pereira, K.C.* (with him *J. Joseph*), for appellant.—The accused has given a reasonable explanation as to how he came by the articles in question. In the face of that explanation, it is for the prosecution to prove that it was false. The prosecution has failed to do that. The accused has stated in evidence that the articles in question were deposited with him by one Appuhamy, and has produced his account books in proof of his statement. The learned Magistrate was wrong in holding that the accused had failed to prove that the articles were left with him as security for a debt.

Counsel cited *Regina v. Craythurst*<sup>1</sup> and *Perera v. Marthelis Appu*.<sup>2</sup>

September 15, 1921. DE SAMPAYO J.—

The accused was originally charged by the police with having retained stolen property, namely, one sledge hammer and crowbar, one nail puller, and one hand fire blow, belonging to the Ceylon Government Railway. In the proceedings only one of these articles, namely, the sledge hammer, was identified. Accordingly, the Police Magistrate restricted the conviction of the accused to that article, but I think the conviction cannot stand, in view of the evidence, and on the law bearing on the subject. The evidence as to loss of articles in the Railway Store is given by Mr. Marwood, Second Assistant Engineer in the Batticaloa-Trincomalee Railway Extension. He could only say that since September, 1920, when the store was opened, there has been a leakage, but as regards these articles he could not say when they were lost, and as I have said before, he definitely identified only the sledge hammer, which contained the letters “C. G. R.” stamped on it. The accused is a boutique-keeper in Trincomalee. The articles were found in his boutique, but he

<sup>1</sup> 1 *Car. & Kir.* 370.

<sup>2</sup> (1919) 21 *N. L. R.* 312.

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gave an explanation as to his possession, which is entitled to be favourably considered. He said that a man named D. Appuhamy, who was working on the Railway Extension, lodged in his boutique, and when he left, about two months ago, he owed the accused for food and other things a sum of Rs. 10·50, and, not being able to pay that debt, he brought and left these articles in the accused's boutique as security. The accused has produced the account which he has kept in Sinhalese, showing the receipt of the articles as security for the debt. There is nothing even distantly suggested that the accused related a false story in any particular at all. I may add that when the police went to the accused's boutique to search for stolen articles, they found these articles in the boutique, and the accused stated to the police exactly what he stated in Court, and made no secret of having received the articles in the circumstances he stated. Not only did he mention the name of Appuhamy, but he stated that he had gone to Habarana in search of employment.

As regards the initials on the sledge hammer, he was questioned, in the course of his evidence, and he said he did not know English. The Magistrate remarks in his judgment that he does not believe the accused when he says that he did not understand what the letters "C. G. R." meant, although there is no evidence whatever to the contrary as to the accused's knowledge of English. The Magistrate also remarks that the accused has entirely failed to prove the existence of an agreement that these articles were kept as security for a debt. The accused has proved it by swearing to the fact and by producing his books in Court. I cannot understand what more the accused can do to prove the existence of an agreement. Then, again, with regard to any attempt on his part to satisfy himself as to the *bona fides* of Don Appuhamy, the Magistrate says that he failed to make any inquiries as to the sledge hammer, as to how it came into Appuhamy's hands, although he traced the history of the other articles with great care. This, again, is inconceivable, because the accused has said that he questioned Appuhamy, and that he said that he bought the article in question. It seems to me that the whole case shows that the accused did not act dishonestly. He *bona fide* accepted the articles as security from Appuhamy.

With regard to the law it has been pointed out in many recent judgments that: "When a man, in whose possession stolen property is found, gives a reasonable account of how he came by it, as by telling the name of the person from whom he received it, and who is known to be a real person, it is incumbent on the prosecution to show that account is false."

I have quoted these words from the judgment of Alderson B. in *Regina v. Crawthurst* reported in *Garrington & Kirwan's Reports*, vol. I., page 370. I may also refer to *Perera v. Marthelis Appu*,<sup>1</sup> where

<sup>1</sup> (1919) 21 N. L. R. 312.

Bertram C.J. has fully discussed the subject with reference to the latest authorities. I think the law there expounded quite applies to the accused in this case, and it must be held that the accused gave a reasonable account as to how he came by the articles, and that the prosecution has failed to satisfy the burden of proof to the contrary.

The conviction is set aside.

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*Set aside.*

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