PARAMESWARAN
V.
OFFICER-IN-CHARGE, POLICE STATION, NORWOOD

COURT OF APPEAL
P. RAMANATHAN, J., AND
P. R. P. PERERA, J.
C.A. NO. 48/84
M. C. HATTON NO. 29864
DECEMBER 09, 1987 AND JANUARY 20, 1988

Criminal Law — Thefts of made tea — Dishonest retention or receiving into possession — Penal Code, Sections, 370 and 394.

The prosecution failed to identify the made tea produced in the case as Stockholm Estate tea and there was no cogent evidence that the tea in question was stolen tea. Hence at the end of the prosecution case the accused had no case to meet and he should have been acquitted. Where there is no evidence at the close of the prosecution case that the crime alleged had been committed by the accused the case should be stopped as there is no case for the accused to answer.

Cases referred to

1. *Queen v. Kularatne* 71 NLR 529
2. *Reg. v. Galbraith* (1981) 73 C. L. R. 124

APPEAL from judgment of the Magistrate's Court of Hatton

E. R. S. R. Coomaraswamy P. C. with *Chula de Silva* and *Gamini Jayasinghe* for accused — appellant.

Kumudhini de Silva, State Counsel for the State.

Cur. adv. vult.

March 24, 1988

PERERA J.

The accused appellant in this case was charged in the Magistrate's Court of Hatton on the following counts:

(1) That between 16.10.82 and 19.10.82, the accused being an employee of the factory of Stockholm Estate, committed theft of 180 kilogrammes of Made Tea valued at Rs. 5,400/- from the possession of J. S. B. Ratnayake,

Superintendent, — an offence punishable under Section 370 of the Penal Code.

(2) In the alternative that on 16.10.82, the accused dishonestly retained or received into his possession 26 kilogrammes of stolen Made Tea, valued at Rs 780/- which was in the possession of J. S. B. Ratnayake, knowing or having reason to believe the same to be stolen property — an offence punishable under Section 394 of the Penal Code.

After trial the learned Magistrate found the accused guilty of both charges and sentenced the accused to a term of one years Rigorous Imprisonment suspended for five years, and a fine of Rs. 500/-. The present appeal is against this conviction and the sentence imposed.

The prosecution case was briefly as follows : It was the evidence of Ratnayake, the Superintendent of Stockholm Estate, that the accused appellant was attached to the factory on Stockholm Estate. On 19.10.'82 about 7.30 a.m. the accused had complained to him that out of 20 boxes of Tea, the Tea in four boxes was missing. At this time the accused was already at the factory. Each box contained 45 Kilogrammes of tea and a Kilogramme of tea was valued at Rs. 30/-. The accused had reported for work that day at 7 a.m. and signed the watcher's book and taken away the keys. Ratnayake did not know what had happened to the tea. He had questioned the workers who worked on the night of 18th October 1982. The accused had not worked on the 18th. According to Ratnayake, those who worked on 18.10.'82 were the Assistant Factory Manager, Thiyagarajah, Sumathipala and the watcher Tikiri Banda. He then complained to the Police regarding the loss. This witness has also stated that there was no work on the 17th October. It must be observed that the bag of Tea marked P 1, was not shown to this witness to identify it as tea from Stockholm Estate.

The prosecution also relied on the evidence of a witness named Arumugam. It was Arumugam's evidence that he worked on Venture Estate. He had gone to the accused's house on 16.10.'82 with Manoharan on business and purchased tea dust

from the accused. Around 4 p.m. on 16.10.82, the accused had informed them that he had tea which he could give them, but the tea was given to them in fact around 7.30 p.m. The tea was given to them in two urea bags. When they were proceeding on the road, carrying these bags of tea, they were apprehended. This witness also does not identify P1, as Stockholm Estate tea.

The next witness called by the prosecution was one Shanmuganathan who stated that he resided on Stockholm Estate and that on 16.10.82 he met Arumugam and Manoharan taking some thing with them. From the smell which emanated from these parcels the contents appeared to be tea. They were carrying two bags and he learnt from them that they were taking tea from the tea maker's house. This witness had later given this information to Ratnayake the Superintendent of the Estate. This witness also does not identify P1, as Stockholm Estate tea.

Manoharan who was the next witness called by the prosecution has testified to the effect that he worked on Venture Estate and that on 16.10.82, he went with Arumugam on business. The accused had told them that he had some made tea. The accused had given them two urea bags of tea containing 26 Kilogrammes. He has identified P1, (one bag) as the tea. He had thereafter handed over the tea to one Rajah of Lakshmi Stores. Although this witness had identified P1, as the bag of tea which was delivered to Lakshmi Stores by him on that date, he has not identified P1, as Stockholm Estate tea.

No Police Officer has given evidence for the prosecution in this case, and the prosecution has closed its case with this evidence.

It was the main submission of learned President's Counsel who appeared for the accused appellant that the prosecution has failed to establish that the tea that was produced marked P1, was Stockholm Estate tea. On an examination of the entirety of the prosecution evidence I find that there is merit in this submission. None of the witnesses who testified on behalf of the prosecution have identified the contents of P1, as Stockholm Estate tea. The charge of theft must therfore in my view necessarily fail. In a criminal case it is imperative that the

identity of productions must be accurately proved by the direct evidence which is available and not by way of inference. Vide *Queen vs. Kularatne* (1) The prosecution in the present case has failed to establish that the tea that was produced in this case was Stockholm Estate Tea.

In regard to the charge under Section 394 of the Penal Code there is no evidence whatsoever to establish that the tea that was sold by the accused appellant to Arumugam and Manoharan was in fact stolen tea. In the circumstances, in my opinion even if the entire prosecution evidence is accepted an essential ingredient of this offence-namely that the tea produced marked P1, is stolen tea beyond reasonable doubt. This charge must also therefore fail.

In the present case, even if the entire prosecution evidence is accepted, the ingredients of the two offences have not been proved. Firstly the article P1, has not been identified by the prosecution witnesses, and secondly there is no cogent evidence that the tea sold by the accused appellant was in fact "stolen property".

It is well settled law that if there is no evidence at the close of the prosecution case, that the crime alleged has been committed by the accused, the case should be stopped, as there is no case for the accused to answer vide-*Reg. vs. Galbraith* (2) the learned Magistrate has totally failed to give his mind to this vital aspect of this case. I am therefore of the opinion that this conviction and sentence should not be allowed to stand. I would accordingly set aside the conviction and the sentences imposed on the accused appellent on both charges and acquit him.

RAMANATHAN, J. — I agree.

Conviction set aside and accused acquitted.