

Officer-in-Charge, Kandy Police  
v.  
Selladurai

**COURT OF APPEAL.**

**VICTOR PERERA, J. AND TAMBIAH, J.**

**C.A. (S.C.) 122/78—M.C. KANDY, 86877.**

**NOVEMBER 21, 1978.**

*Penal Code, section 394—Charge of retaining stolen property—Reasonable explanation by accused—Burden on prosecution to prove its falsity.*

**Held**

Where an accused charged with retention of stolen property gives a reasonable account of how he came by it, than it is incumbent on the prosecution to show affirmatively and beyond reasonable doubt that such account is false.

**Case referred to**

(1) *Kandiah v. Podisingho*, (1921) 23 N.L.R. 337.

*V. S. A. Pullenayagam*, with *D. Hattotuwa* and *A. Chinniah*, for the accused-appellant,  
*Anil Silva*, State Counsel, for the Attorney-General.

November 21, 1978.

**TAMBIAH, J.**

The accused-appellant in this case has been found guilty on two counts—

(1) That on or about 17.12.1972 he did dishonestly retain stolen property knowing or having reason to believe that it was stolen property, to wit: a "Phillips" radio valued at Rs. 650, belonging to one Mrs. Pillai, an offence punishable under section 394 of the Penal Code.

(2) That in the course of the same transaction and at the same time and place he did dishonestly retain stolen property knowing or having reason to believe that it was stolen property to wit: a "Unic" radio valued at Rs. 680, belonging to one A. P. Perera, an offence punishable under section 394 of the Penal Code.

The accused was sentenced to three months' rigorous imprisonment on count (1) and three months' rigorous imprisonment on count (2).

The owners of the two articles in question, have testified that the said articles were stolen from their respective houses on 22.9.72 and on 31.10.72. They also identified the two radio sets as their property.

The Inspector of Police, Velusamy, stated in evidence that the two articles were recovered from the accused's room on 17.12.72.

The prosecution has therefore established that the two articles were stolen property, and that the accused has been in exclusive possession of them. The nature of the articles is such that it cannot be said that they readily pass from hand to hand in the everyday business of human life; the prosecution has therefore also established recent possession of stolen property.

The prosecution's own witness, Ramasamy Selliah, in his evidence stated that he sold the two radio sets to the accused at Rs. 500 each ; he gave no receipts to the accused ; that he was unaware that the two radio sets were stolen property.

The accused, when he was called upon to give evidence stated that the witness Selliah sold him the two radio sets, he paid Rs. 500 for each radio ; he has had prior dealings with Selliah ; he himself did not know that they were stolen articles.

The question then arises, whether the accused has given a reasonable account for his possession of the stolen articles. In the case of *Kandiah v. Podisingho*, (1) at 338, De Sampayo, J. stated—

“ 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 ’ . ”

This the prosecution must do affirmatively and beyond reasonable doubt.

The prosecution's own witness, Selliah, supports the accused's account of how he came by the two radio sets in question.

The conviction and sentence is set aside and the accused-appellant is acquitted.

**VICTOR PERERA, J.**—I agree.

*Conviction quashed.*

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