

1968 Present : Pandita-Gunawardene, J.

R. A. B. PERERA, Appellant, and INSPECTOR OF POLICE,
BALANGODA, Respondent

S. C. 1151/68—M. C. Balangoda, 35650

Offence of loitering by reputed thief—Ingredients of offence—Burden of proof—Penal Code, s. 451.

In a prosecution, under section 451 of the Penal Code, for loitering by a reputed thief, it must be proved (a) that the accused is a reputed thief, (b) that he was loitering or lurking about a public place, and (c) that his intention was to commit theft or some other unlawful act. Proof that the accused is a reputed thief may be established on his being identified subsequent to his arrest on suspicion and at the trial.

APPEAL from a judgment of the Magistrate's Court, Balangoda.

Accused-appellant in person.

S. W. B. Wadugodapitiya, Crown Counsel, for the Attorney-General.

December 16, 1968. PANDITA-GUNAWARDENE, J.—

On 16th December 1968, at about 2.15 a.m. the appellant was seen by Sergeant Alwis of the Balangoda Police, who was on patrol duty, in the verandah of a building called Koya Stores, Main Street, Balangoda, peeping through a space in the planks and at the same time, meddling with a padlock which was apparently on the plank door. On suspicion, Sergeant Alwis arrested him. The appellant was thereafter finger-printed. An examination of the finger-prints disclosed that he was a reputed thief—he had a record of 19 previous convictions for theft. On these facts, the appellant was charged on two counts. On the first count, he was charged as follows: You were found in a building, to wit, Koya Stores, Main Street, Balangoda and failed to give a satisfactory account of yourself and thereby committed an offence punishable under Section 450 of the Penal Code, Cap. 19, L. E. C. On the second count, he was charged as follows: at the same time and place aforesaid, the above-named accused being a reputed thief did loiter about a public place, to wit, Main Street, Balangoda, with intent to commit theft and thereby committed an offence punishable under Section 451 of the Penal Code, Cap. 19, L. E. C.

The learned Magistrate has accepted the evidence for the prosecution and rejected the appellant's defence that he was apprehended by the Police at about 8 p.m. on 15th December 1968, when he was about to board a bus. On these facts as found by the learned Magistrate, I am satisfied that the appellant has been rightly convicted on Count 1 of being found in a building and failing to give a satisfactory account of himself.

To establish guilt on the second count, it must be proved that (a) the appellant was a reputed thief, (b) that he was loitering or lurking about a public place and (c) that his intention was to commit theft or some other unlawful act. It has been held by Dias, J. in the case of *Mansoor v. Jayatilleke*¹ that condition (a) "is not satisfied by first arresting the accused on suspicion and then *ex post facto* establishing that he was a thief, a fact which was unknown at the time the alleged offence was committed". De Silva, J. in the case of *Perera v. Police*², had earlier expressed the same view. Speaking for myself, I would, with respect, disagree with the views expressed in these judgments: that at the time an accused is arrested for committing the offence of loitering,

¹ (1947) 48 N. L. R. 308.

² (1946) 32 O. L. W. 108.

the officer arresting him should be aware that he (the accused) was a reputed thief. A reading of Section 451 does not warrant such a view. If that were to be a condition precedent, the Section would have been cast in a manner to give effect to that pre-requisite. Looking at the matter from a realistic angle, it cannot be expected that all Police Officers would know at sight, each and every reputed thief in the island. The dicta of Dias, J. and de Silva, J. do not, in my view, accord with common sense. It would only result in placing an impossible burden on the prosecution and render Section 451 of the Penal Code, inoperative.

It is my opinion that proof that an accused charged under Section 451 is a reputed thief may be established on his being identified subsequent to his arrest on suspicion and at the trial. I therefore find that (a) has been proved.

In regard to (b), the evidence is that the appellant was in the verandah of the building, meddling with a padlock and peeping through the planks. The question is whether the conduct of the appellant amounts to loitering or lurking about a public place. Of the meanings attributed to the word loiter in the Concise Oxford Dictionary, "hang about" is one. On the facts as found, I am satisfied that the appellant did hang about a public place. As for (c), it is manifest, having regard to the circumstances, that it can be rightly presumed that the intention of the appellant was to commit theft. In the result, the prosecution has proved the necessary ingredients of the offence under Section 451 of the Penal Code. The appeal is dismissed.

Appeal dismissed.
