1971 *Present*: **G. P. A. Silva, S.P.J.**

A. S. JOSEPH, Appellant, *and* C. SIVASUBRAMANIAM (S. I. Police), Respondent

S.C. 552/71—M.C. Colombo, 40393/A

Penal Code—Section 451—Offence of loitering about by reputed thief—Proof—Evidence Ordinance, s. 54.

In a prosecution under section 451 of the Penal Code for loitering about a public place by a reputed thief, the proof of a number of previous convictions for thefts is sufficient to establish the ingredient that the accused was a reputed thief. In such a case, section 54 of the Evidence Ordinance does not stand in the way of such evidence being led.

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

R. C. Gooneratne, for the accused-appellant.

N. J. Vilcassim, Crown Counsel, for the Attorney-General.

December 10, 1971. G. P. A. SILVA, S.P.J.—

The charge against the accused was that he, being a reputed thief, did loiter about in a public place, to wit, the Central Bus Stand, Pettah with intent to commit theft and that he thereby committed an offence punishable under section 451 of the Penal Code.

The evidence for the prosecution consisted of that of a Sub-Inspector of Police and a Constable belonging to the Vice Squad, Fort. The Sub-Inspector's evidence was that he was in plain clothes at the Pettah Bus Stand where there were about fifty people waiting for buses and that when he was looking out he saw this accused peeping into the pockets of the people who were at the bus stand. When the bus arrived some people got off the bus and others got in. A person clad in white trousers also got into the bus and this accused followed that person, got into the bus and as the bus started to go off, the accused picked the pocket of the person getting into the bus and thereafter got off. He went up and got hold of the accused but did not find anything with him. He took the accused to the Pettah Police Station and subsequently learnt that he was an Island Reconvicted Criminal bearing No. 340/58. The Police Constable who was working with him supported the Inspector on these points.

The prosecution also led the evidence of a Police Officer of the Office of the Registrar of Finger Prints who produced the previous conviction sheet of the accused which disclosed that he had seven previous convictions, five of them being for theft, one for robbery and one for loitering in a public place.

The accused when called upon for his defence made a statement from the dock in which he said that he was at the bus halt and that he got into the bus and got off as there were too many passengers and that he was thereupon arrested by the Sub-Inspector and the Constable, who took him to the Pettah Police in a cab and thereafter produced him in Court the following day. Impliedly, of course, he denied the charge. The learned Magistrate convicted him on this evidence and sentenced him to a term of two years rigorous imprisonment and two years police supervision and also fined Rs. 25, in default two weeks rigorous imprisonment.

The first point taken up on behalf of the accused by his Counsel is that evidence of previous convictions alone was not sufficient to establish that the accused was a reputed thief, such reputation being an essential ingredient in the offence with which the accused was charged. His contention was that evidence of previous convictions given by the Police constituted suspicion and not reputation and that evidence of wide publicity of previous convictions was necessary in order to establish the ingredient that the accused was a reputed thief. He cited several English cases in support of his contention, that previous convictions only helped to establish suspicion and not reputation. By itself, I may even agree with the proposition that a previous conviction in a Court would establish suspicion and not necessarily reputation, but when a person has seven previous convictions at different times, whether it be in the same court or in different courts of the Island, the only reasonable inference is that the accused earned sufficient publicity in those cases to have the reputation of being a thief. It is to be noted that out of the seven previous convictions, five were for theft and one for robbery. Having regard to the fact that trials of criminal cases of the type that the accused has been convicted of take place in public in Magistrate's Courts or District Courts where police officers and witnesses are associated with the case before it reaches the stage of conviction, no other inference is possible than that the proof of a number of convictions for theft gives the person convicted the reputation of being a thief.

Certain decisions were cited in support of the contention that previous convictions alone are not sufficient to prove the ingredient of the accused being a reputed thief. Two judgments cited in support of this were : *Mansoor v. Jayatileke,*[1] 48 N.L.R. 308 and *Perera v. The Police,*[2] 32 C.L.W. 108. In *Mansoor v. Jayatileke,* it was held that the burden was on the complainant to show that at the time the accused loitered or lurked about a public place, he had the reputation of being a thief. Dias, J., went on to say that the prosecution does not discharge that burden 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. With great respect I am unable to agree with that observation. That observation presupposes same additional ingredient of Section 451 of the Penal Code which the prosecution is not obliged to prove. The words of the Section are not, "Whoever being known by the officer arresting him to be a reputed thief loiters or lurks about....." or words to that effect but, "Whoever, being a reputed thief, loiters or lurks about....". I entirely agree with

[1] *(1947) 48 N.L.R. 308.* [2] *(1946) 32 C.L.W. 108.*

the view taken in this matter by Tennekoon, J. in the case of *Samson v. Inspector of Police Maradana*[1], 72 N.L.R. 330 in which I find that he had disagreed with the view expressed by Dias J. which I have referred to. It is quite sufficient for the prosecution to prove a series of previous convictions of theft in order to establish the ingredient that the accused was a reputed thief.

Counsel for the appellant also argued that there was no evidence in this case that the accused loitered about a public place. I think the evidence of the Inspector that he watched this accused peeping into the pockets of the people who were at the bus stand ; that he moved and boarded another bus and that he attempted to pick a person's pocket, was sufficient to establish that he was loitering about a public place, namely the Pettah Bus Stand. There is therefore no substance in either of these contentions. The last submission of Counsel for the appellant was that under Section 54 of the Evidence Ordinance, the evidence of previous convictions could not have been led by the prosecution as part of its case. While section 54 prevents the prosecution from leading evidence of bad character in a criminal proceeding, explanation (1) of this section makes this provision inapplicable in cases in which bad character of any person is itself a fact in issue. One of the ingredients of a charge under section 451 of the Penal Code being that the accused is a reputed thief, the prosecution in presenting its case will necessarily be compelled to lead evidence of bad character of the accused, namely, that he was a reputed thief. Therefore, it was quite in order for the prosecution, in order to establish the charge in this case, to lead evidence of bad character, to the extent of showing that the accused was a reputed thief and section 54 will not stand in the way of such evidence being led. Along with this contention a further submission was made, that the mode of proof which the prosecution employed to prove the previous convictions, namely by calling an officer of the Registrar of Finger Prints to produce the previous conviction sheet, was not one warranted by the Evidence Ordinance. It is correct that this mode of leading evidence of previous convictions is one prescribed by the Prevention of Crimes Ordinance, Chapter 22 and that it was to be adopted only after the conviction of an accused. However, in the absence of an express provision in regard to the mode of proof of a previous conviction in the Evidence Ordinance, I can see no serious objection to the prosecution having recourse to this mode of leading evidence which is sanctioned by law although in a different connection. There may have been some substance in this complaint if indeed the position of the accused was that these previous convictions

[1] *(1967) 72 N.L.R. 330.*

did not occur. It is to be noted, however, that when this evidence was led, the accused did not contradict that position by cross-examining the witness nor did he take up the position even when making his statement from the dock that those previous convictions did not apply to him. Even if there was a technical error in the method of proof, therefore, having regard to the position taken by the accused, I am of the view that no prejudice was caused to him at all by such error. In the circumstances I see no reason to interfere with the conviction in this case. The appeal is accordingly dismissed.

Appeal dismissed.