
Present: De Sampayo J.

1919.

SILVA v. BANDA.

326—P. C. Badulla, 11,744.

*Criminal misappropriation — Sale of bull without cattle voucher —
Subsequent sale to another on a voucher.*

A sold a bull to B, who sold it to C; no cattle voucher was executed in favour of B or C. A thereafter purported to sell the bull to D on a cattle voucher duly executed.

Held, that A had not committed criminal misappropriation.

THE facts appear from the judgment.

J. S. Jayawardene, for accused, appellant.—The appellant did not lose his legal title to the bull owing to the absence of a cattle voucher (2 A. C. R. 37; 3 Bal. 39; 3 Bal. 162.) He had, therefore, the right to deal with it as his own. The party who is said to have purchased the animal from the accused has his civil remedy for the refund of the consideration.

The charge of criminal misappropriation is clearly bad, as the accused did not interfere with any one's possession, or convert the animal to his own use (3 *Browne* 88).

May 23, 1919. DE SAMPAYO J.—

This is a very curious case. The accused has been convicted on a charge of criminal misappropriation of a bull. The bull belonged to the accused, but it appears that in 1917 he sold it to his brother-in-law Appuhamy, who in turn sold it to one Guneris. The last named again sold the bull to Haramanis, in whose possession the bull remained from the date of his purchase until the institution of this case. Not one of this series of persons had a cattle voucher as required by the law in regard to the various sales, but it is not necessary to consider whether or not in the circumstances the

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accused continued to be the legal owner of the bull. All that need be mentioned in connection with this is that on December 9, 1918, while the bull was in the possession of Haramanis, the first accused purported to sell the bull to one Paronavitane on a cattle voucher duly executed by him before a headman on that day. The offence of criminal misappropriation is supposed to have been committed on that date by his transfer of the bull to Paronavitane. I fail to understand how these facts can be said to amount to proof of criminal misappropriation of the bull by the accused. The gist of the offence of criminal misappropriation is taking or converting to one's use some movable property belonging to another person. In this case, whether Haramanis was the owner of the bull or not on the day in question, the accused did not take the bull out of Haramanis's possession, or in any way convert it to his own use. His acts may be described as a fraudulent attempt to claim property which he had already transferred to another person; but this is wholly insufficient to satisfy the definition of the offence of criminal misappropriation. It appears that he attempted to claim the property with the assistance of the headman by causing the cattle voucher to be altered, with the view of showing that at a certain date he was still the owner of the bull, but that makes no difference as regards the point involved in this case.

I set aside the conviction and acquit the accused.

Set aside.
