

1967

Present: Tennekoon, J.

K. V. A. SAMSON, Appellant, and INSPECTOR OF POLICE,
MARADANA, Respondent

S. C. 742/67—M. C. Colombo, 44070/A

Penal Code—Section 451—Loitering about by reputed thief—Ingredients of offence—Quantum of evidence.

In a prosecution under section 451 of the Penal Code, it is open to the complainant to lead evidence of previous convictions to establish the fact that the accused is a reputed thief. (*Perera v. The Police*, 32 C. L. W. 108, not followed). Further, the fact of the accused being a reputed thief at the time of loitering may be established independently of the arresting officer's knowledge of the accused's reputation. (*Mansoor v. Jayatilleke*, 48 N. L. R. 308, not followed).

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

Anil J. Obeyesekera, for the accused-appellant.

Ranjith Gunatilleke, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 6, 1967. TENNEKOON, J.—

The appellant was convicted of the following charge:—

“You are hereby charged, that you did, within the jurisdiction of this Court at Darley Road, Maradana, on 21st April, 1967, being a reputed thief did loiter about a public place to wit: Darley Road, Maradana, with intent to commit theft and that you have thereby committed an offence punishable under section 451 of the Ceylon Penal Code.”

It is submitted by Counsel for the appellant that there is no evidence on record to support the finding that the accused was a *reputed* thief.

The evidence for the prosecution on this point was that the accused was an "Island Reconvicted Criminal" bearing No. 243/57; and that he had five previous convictions which were as follows:—

" (1) 15-11-52—Theft of a ring val: Rs. 20/- Sec. 369 C.P.C. M.C. Colombo 32195/J. 565. Three years to Hikkaduwa.

(2) 27- 5-57—Theft of a purse with cash Rs. 31/-. Sec. 367 C.P.C. M.C. Colombo 41987/A. Six months R.I.

L—7801

(3) 2-10-58—H. B. and theft of cash and articles val. Rs. 153/52. Sec. 443, 369, C.P.C. M.C. Colombo 10173/A. Three months R.I. on each count to run consecutively.

M—9181

(4) 2- 3-60—(1) Retaining a Carburettor Val. Rs. 50/.

(2) Retaining stolen property Val. Rs. 3/50.

(3) Retaining stolen property Val. Rs. 7/60. Sec. 394 C.P.C. M.C. Colombo 29564/B. One year R.I. and two years P.S.

O—5851

(5) 4-12-63—Theft of cash Rs. 13/- Sec. 367 C.P.C. M.C. Colombo 47053/A. Two years R.I.

R—9885 "

The prosecution also called one Police Constable Gunasena of the Maradana Police who testified that he was a supervisor of criminals in the Maradana area. He also said that he knew the accused who was an "Island Reconvicted Criminal" bearing No. 243/57. It was this officer who noticed the accused loitering on the day in question, and arrested him. The accused giving evidence admitted that he was an "Island Reconvicted Criminal", that he had four previous convictions, all of which were for theft. Counsel for the appellant cited in support of his submission the case of *Perera v. The Police*¹ in which it was held that—

"It is not open to the prosecution to lead evidence of previous convictions to establish the fact that the accused is a reputed thief. The evidence available for the prosecution must be evidence of the reputation of the accused apart from previous convictions."

With all respect I do not agree; it seems to me that "repute" does not mean only false repute but also includes a reputation for what one actually is. Reputation is the estimate or belief that other people have of the nature of a man's character. Nothing could be a better foundation

¹ (1946) 32 C. L. W. 103.

for forming an estimate of another's character than actual instances in which that character is displayed. Such instances of thievery it is true may establish that a man is a thief but may not establish his reputation as a thief. But where the person is caught out, publicly prosecuted and convicted on numerous occasions it can hardly be said that those convictions have not given him a reputation for being a thief among those people who are likely to form any opinion or estimate of his character. Members of his family, his immediate friends, acquaintances and also persons who live in his neighbourhood could not have been unaware of his frequent convictions for theft and of his frequent disappearances from home to serve terms of imprisonment for theft. I think this is a case in which the accused's reputation for being a thief has been established indirectly and circumstantially.

Counsel for the appellant also referred me to the case of *Mansoor v. Jaystillake*¹ in which it was held that on a charge under section 451 of the Penal Code the burden is on the complainant to show at the trial that the accused loitered or lurked about a public place, that he had a reputation of being a thief, and that the prosecution does not discharge that burden by 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. The proposition that the reputation of being a thief must exist at the time of loitering is unexceptionable, but, with respect, it seems to me that it is irrelevant that the arresting officer did not know that the accused had such a reputation at the time of arrest. The absence of such knowledge on the part of the arresting officer may affect lawfulness or otherwise of the arrest, but I cannot see why the fact of the accused being a reputed thief at the time of loitering which is one of the ingredients of the offence under section 451 of the Penal Code cannot be established independently of the arresting officer's knowledge of the accused's reputation.

I find also another case viz. *Nair v. Velupillai*² in which section 451 of the Penal Code has been considered. The question of the nature of the evidence necessary to establish the ingredient of the accused being a "reputed thief" was apparently *not* in question in that case. But it is interesting to note that Soertsz, J. makes this general observation in regard to that section: "The accused man was charged in that being 'reputed thief' he was 'found loitering about on the public road with intention to commit theft, or other unlawful act'. To establish such a charge the prosecution must prove (1) that the accused was a thief or was reputed a thief, (2) that he was loitering about in a public place, (3) that his intention was to commit theft or other unlawful act." In saying that the prosecution had to establish that the accused was a thief or reputed thief, I think that Soertsz, J. was also impliedly giving expression to what I have said earlier in this judgment viz. that a person who has repeated convictions for theft is a thief who cannot but have a reputation of being a thief.

¹ (1917) 48 N. L. R. 303.

² (1935) 37 N. J. R. 248.

I hold that the prosecution has placed sufficient evidence before the learned Magistrate for him to conclude that the accused was a reputed thief at the time he was found loitering as alleged in the charge.

The appeal is dismissed. Conviction and sentence are affirmed.

Appeal dismissed.

