

1974 Present: Wijesundera, J., and Tittawella, J.

G. TILLEKERATNE, Appellant, and INSPECTOR OF POLICE,  
PETTAH, Respondent

S. S. 617/73—M. C. Colombo, 68642/A

*Penal Code (Cap. 19)—Section 451—Offence of loitering by reputed thief—Proof.*

Where a person alleged to be a reputed thief is charged under section 451 of the Penal Code for loitering, evidence of his previous convictions for theft must be led by the prosecution before and not after conviction. The mere statement of the complainant, in the absence of any evidence of previous convictions, is insufficient to prove that the accused was a reputed thief.

**A**PPEAL from a judgment of the Magistrate's Court, Colombo.

Accused-appellant absent and unrepresented.

*Ranjan Mendis*, State Attorney, for the Attorney-General.

March 13, 1974. WIJESUNDERA, J.—

The accused-appellant was charged under section 451 of the Penal Code. To succeed in a charge of this nature the prosecution has to establish that the accused is a reputed thief and that he was loitering in a public place with intent to commit theft. In support of the first matter that the accused is a well-known thief, a constable who was on duty on the pavement on that day has given evidence. The accused gave evidence, denied the

charge and stated that he had borne a good character for the last 10 years.

The learned Magistrate in his findings states that there were two previous convictions against the accused for theft, but these were brought to light only after the conviction in this case. The previous convictions had been entered more than ten years ago.

In the circumstances the mere statement of the Police constable, in the absence of any evidence of previous convictions, is insufficient to prove that the accused was a reputed thief. In fact the State Attorney so concedes. Therefore, we have no alternative but to set aside the conviction and acquit the accused.

TITTAWELLA, J.—I agree.

*Appeal allowed.*

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