

1920.

Present : Schneider A.J.NAIDE *v.* PACKEER *et al.*714, 715—*P. C. Kandy, 4,024.**Misjoinder of charges—Theft of bull—Possession of beef.*

Where there is no identification of the beef which is found in a person's possession with being the flesh of the stolen animal, it is an irregularity to join a charge of theft of the animal together with a charge of being in possession of beef which cannot be accounted for satisfactorily.

THE facts appear from the judgment.

Croos-Dabrera, for the appellants.—There has been a misjoinder of accused and charges. The second accused is only charged with having been in possession of beef, and the third and fourth accused with possession of beef and theft of a calf. There has been no identification of the beef. There is nothing to show that the flesh found is that of the stolen animal. The accused have been seriously prejudiced by the joinder of the charges. The value of the calf is only Rs. 12, and if they had been charged only with theft, the Police Court had no jurisdiction to try it.

Counsel cited *Police Sergeant v. Samijah*,¹ *Keerala v. Appuhamy*,² *William v. Dinoris*,³ and *Appuhamy v. Appuhamy*.⁴

October 12, 1920. SCHNEIDER A.J.—

In this case five persons were charged with being concerned with the theft of a bull calf. The first and fifth accused are said to be still in concealment. The evidence was that the animal in question, which was the property of one Appu Naide, had been removed by thieves on the night of July 10. One Ran Naide gave evidence to

¹ (1914) 3 *Bal. Notes of Cases* 61.

² (1919) 6 *C. W. R.* 338.

³ (1919) 6 *C. W. R.* 365.

⁴ (1917) 4 *C. W. R.* 288.

the effect that he saw the third, fourth, and fifth accused drive a black bull which he was unable to identify as the property of Appu Naide. A search was instituted, and beef was found, according to the evidence, in the house of the first, second, third, and fourth accused. Upon this evidence the Police Magistrate charged the second accused with having been found in possession of beef for which he was unable to account to the satisfaction of the Magistrate under section 21 of the Butchers' Ordinance, 1893, and the third and fourth accused with the theft of the bull calf and also of unlawful possession of beef under section 21 of the Butchers' Ordinance. He acquitted the second accused, and convicted the third and fourth, and sentenced them to three months' rigorous imprisonment each. The value of the bull calf is given as Rs. 12. If the charge against the third and fourth accused had been only of theft of the animal in question, it is quite obvious that the Police Magistrate had no jurisdiction to try that offence. Under the provisions of the Village Communities Ordinance the offence is one triable only in a Village Tribunal, the jurisdiction of which is exclusive. The offence of being in possession of beef for which a person cannot satisfactorily account is undoubtedly triable in the Police Court. But objection has been taken to the conviction on the ground that there had been a misjoinder of accused and also of charges; that while the third and fourth accused were charged with theft, and also of being in possession of beef for which they could not satisfactorily account, the second accused was charged only with being in possession of beef. But it seems to me that this objection need not be considered in this case, because the second accused has been acquitted. The objection as regards the misjoinder of charges is clearly fatal to the conviction. It has been pointed out in a number of cases, that where there is no identification of the beef which is found in a person's possession with being the flesh of a stolen animal, that it is an irregularity to join a charge of theft of the animal together with a charge of being in possession of beef which cannot be accounted for satisfactorily. The evidence in this case clearly fails to connect the beef which was found in the house of the third and fourth accused with the animal which Appu Naide had lost. I would refer to the case of *Police Sergeant v. Samijah*,¹ where the law on the subject has been clearly laid down by Wood Renton C.J., and also to the cases of *Keerala v. Appuhamy*² and *William v. Dinoris*,³ where the principle laid down in the case of *Police Sergeant v. Samijah*¹ has been followed. I would, therefore, set aside the conviction, but without prejudice to any further proceedings which may be considered necessary to be taken in the interests of justice.

Set aside.

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A.J.

*Naide v.
Packer*

¹ (1914) 3 Bal. Notes of Cases 61.

² (1919) 6 C. W. R. 338.

³ (1919) 6 C. W. R. 365.